

Digitized by the Internet Archive  
in 2022 with funding from  
University of Toronto

<https://archive.org/details/31761114671969>



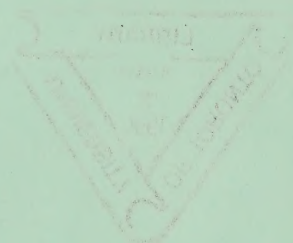


A20N  
C13  
578

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ORGANIZATION

THURSDAY, 11 MAY 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Jackson, Cameron (Burlington South PC) for Mrs Marland

Miller, Gordon I. (Norfolk L) for Mr Brown

Clerk: Mellor, Lynn





LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, 11 May 1989

The committee met at 1533 in committee room 1.

ORGANIZATION

Clerk of the Committee: Honourable members, it is my duty to call upon you to elect a chairman.

Mr Dietsch: I nominate Floyd Laughren as chairman of the standing committee on resources development.

Mr Jackson: I will second that.

Clerk of the Committee: Are there any further nominations? There being no further nominations, I declare nominations closed and Mr Laughren duly elected chairman of the committee.

The Chairman: May I first thank the members of the committee for their vote of confidence and anticipate that it will continue in all future rulings. The next order of business is the election of a vice-chairman. Nominations are open for the election of a vice-chairman.

Miss Martel: I would like to nominate the member for Algoma, Mr Wildman, as vice-chairman.

The Chairman: Miss Martel nominates Mr Wildman. Any further nominations?

Mr Dietsch: I will second that nomination.

The Chairman: It is seconded by Mr Dietsch. Any further nominations? None? Mr Wildman is vice-chairman.

Mr Dietsch moves that unless otherwise ordered a transcript of all committee hearings be made.

Motion agreed to.

The Chairman: That actually does complete the formal part of the business. I will just ask members one question about the next sitting. I did sound this out with the two other parties and Miss Martel, about not having a meeting next week even though normally we would, because, quite frankly, it is the budget week. I am the budget critic for my caucus and I would appreciate it very much if we could start the following Wednesday. The following Monday is a holiday; the following Wednesday is 24 May. Is that acceptable to members of the committee?

Mr Dietsch: That is acceptable, Mr Chairman.

The Chairman: I appreciate that very much, because it does make it a lot simpler for me.

Mr Dietsch: We want the record to show that we are a most co-operative committee and recognize that the chairman has other responsibilities of which he takes very serious note and that we are quite willing to abide by his request.

The Chairman: Thank you very much. I do appreciate that. Is there any other business? If not, we are adjourned until Wednesday, 24 May.

The committee adjourned at 1536.



CA20N  
XC 13  
-578

Government  
Publication  
R-2

STANDING COMMITTEE ON RESOURCES DEVELOPMENT  
WORKERS' COMPENSATION AMENDMENT ACT, 1989  
THURSDAY, 25 MAY 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)  
VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)  
Brown, Michael A. (Algoma-Manitoulin L)  
Dietsch, Michael M. (St. Catharines-Brock L)  
Lipsett, Ron (Grey L)  
Marland, Margaret (Mississauga South PC)  
Martel, Shelley (Sudbury East NDP)  
McGuigan, James F. (Essex-Kent L)  
Stoner, Norah (Durham West L)  
Tatham, Charlie (Oxford L)  
Wiseman, Douglas J. (Lanark-Renfrew PC)

Also taking part:

Mackenzie, Bob (Hamilton East NDP)  
Rae, Bob (York South NDP)

Clerk: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

Witness:

From the Ministry of Labour:

Sorbara, Hon. Gregory S., Minister of Labour (York Centre L)



LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, 25 May 1989

The committee met at 1529 in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

The Chairman: The standing committee on resources development will come to order. We have been charged with the task of dealing with Bill 162 clause by clause.

The members will have received a number of documents from the clerk: the Workers' Compensation Act and Bill 162, the one we are debating, an Act to amend the Workers' Compensation Act, reprinted. I should point that out to members. Bill 162 that you have in front of you is not the legitimate Bill 162; it is reprinted to show amendments the minister has proposed. It is not Bill 162 the way it passed second reading; it is Bill 162 with proposed amendments in it. The only reason we do that is to make it easier when we are dealing with the amendments in clause-by-clause.

We also have the Quebec workers' compensation legislation, which members asked about earlier, plus the government amendments to Bill 162. That should be the package you have.

There was an agreement that the minister would make an opening statement today and the two opposition parties would have an opportunity, if they so desired, to respond or to make their own statements this afternoon. So we should proceed and we will see when we are finished whether we have time to get into the clause-by-clause debate.

Mrs Marland: Since I am the next speaker in the House on the budget, I am wondering if I may take with me a copy of the minister's statement so I might read it, if I have a chance, while I am speaking on the budget, and come back and ask some questions.

The Chairman: Is there an extra copy of the minister's statement available?

Hon Mr Sorbara: I think there must be somewhere.

The Chairman: Okay; good suggestion. Then we will proceed with the minister's opening statement.

Hon Mr Sorbara: I would not mind a copy of Mrs Marland's remarks on the budget. I think that would be a fair trade. There is some disagreement there.

Shortly, you are going to begin clause-by-clause consideration of Bill 162, a bill designed to make workers' compensation in this province fairer in

the compensation it provides, and more effective in the role it plays in helping injured workers return to work.

At this time, therefore, I am tabling before you a series of amendments to Bill 162 that will clarify legislative language in the bill and address issues that have been raised during the province-wide public hearings conducted by your committee earlier this year.

These public hearings, combined with the other work of your committee, have been a very good and healthy process. They have provided valuable opportunities for public input. This in turn has generated important insights into the bill.

The government, for its part, has listened attentively throughout the hearings process. What we have heard has shown us ways to further refine Bill 162 to make it clearer and therefore more effective.

However, before I begin to describe the amendments, I would like to briefly recap the basic intentions and tenets of Bill 162 and outline some of the major concerns that have been expressed about the bill.

As members of your committee know, the workers' compensation system has been the subject of reform for the past decade. Bill 162 has been brought forward to deal with two of the system's most vexing problems: first, that it does not respond as fairly as it should to the economic needs of permanently injured workers, and second, that it does not respond as effectively as it should to their rehabilitation needs.

Comme le savent les membres de votre comité, le système d'indemnisation de la Commission des accidents du travail a fait l'objet de réformes au cours des dix dernières années. Le projet de loi 162 essaie de résoudre deux des plus ennuyeux problèmes du système: d'une part, qu'il ne répond pas aussi équitablement qu'il le devrait aux besoins économiques des travailleurs souffrant d'incapacité permanente; d'autre part, qu'il ne répond pas aussi efficacement qu'il le devrait à leurs besoins en réadaptation.

To begin with, Bill 162 proposes the creation of a dual award system for compensating workers who are permanently disabled as a result of workplace illness or workplace injury. Under this two-track approach, the first award is a loss-of-earnings award to compensate workers for the impact the injury will have on their future capacity to earn a living at their pre-injury income level. The second award, which is an award for noneconomic loss, will compensate injured workers for the permanent suffering and loss of enjoyment of life caused by their injuries.

In addition to the dual award system, Bill 162 also includes provisions to help injured workers recover from their injuries and return to work earlier and more successfully. Under it, injured workers will be provided quicker access to vocational rehabilitation services. The bill will also place an obligation upon employers to re-employ injured workers who are able to return to work.

Bill 162 is a far-reaching and much-needed piece of legislation whose fundamental principles are unassailable. And, judging by the growing number of provinces that are taking or have already taken similar steps, Ontario is clearly not alone in the conviction that the principles are sound.

As is to be expected with such far-reaching legislation, Bill 162 has attracted a good deal of attention. As members of this committee know only too well, it has generated its fair share of public debate. During that process, four groups of issues have emerged.

The first is that any dual award approach for compensating injured workers that does not involve a major injection of new funds should not be implemented.

In response to this, I want to confirm the government's view that there are already considerable funds in the system with which to effect these reforms. It has been the government's intent from the outset that these funds be reallocated in such a way that injured workers in greatest need derive the greatest benefit. It would be unacceptable at this point in time to contemplate or propose measures that would generate significant new upward pressure on assessment rates in the system. Those rates are already the highest by far in Canada, and Ontario claimants are the beneficiaries of this.

The dual award system being proposed in Bill 162 will ensure that the very substantial resources available to the Workers' Compensation Board will produce fairer and more effective compensation to injured workers than anywhere else in Canada.

Le système d'indemnisation double proposé par le projet de loi 162 vise à assurer que les importantes ressources disponibles à la Commission des accidents du travail permettront aux travailleurs blessés de recevoir une indemnisation plus équitable et plus efficace que toutes les autres indemnisations qui existent ailleurs au Canada.

The second group of issues relates to policy and administration concerns that lie outside the subject matter of Bill 162.

As your committee members know, a number of these issues will be addressed in a green paper, which is to be the next step in our process of reform. What is more, as part of its ongoing administrative obligation, the Workers' Compensation Board is addressing administrative and policy concerns within the board.

The third group of issues to emerge in the public debate on Bill 162 is connected with misunderstandings over specific provisions, a number of which were due to the language of the legislation. Many were cleared up during this committee's hearings, but some are still outstanding as a result of unclear language. We are addressing these issues in the government's amendments.

The fourth group involves issues that are based on genuine differences of opinion over the content of the bill. The amendments will also address a variety of these issues.

The amendments in the package I am tabling here today will both clarify the legislative language of Bill 162 and address specific concerns about content. They are, of course, accompanied by explanatory notes. Some are minor refinements of a technical nature that will be quickly apparent during the committee's clause-by-clause consideration. In the interests of time, I would prefer to bypass these today so that I may describe the more substantive amendments in the package.



1540

As you will recall, before your committee began the public hearings I made a commitment to introduce four amendments intended to respond to concerns that had surfaced subsequent to the bill's introduction:

First, that injured workers may choose either a doctor from a government-appointed roster or one suggested by the Workers' Compensation Board for the purpose of assessing the extent of a permanent impairment to be considered by the board in determining a noneconomic-loss award;

Second, that either an injured worker or an employer may appeal to the Workers' Compensation Appeals Tribunal any WCB decision regarding the amount of a noneconomic-loss award.

Third, that either an injured worker or an employer will be able to appeal to the tribunal decisions by the WCB regarding re-employment.

Fourth, that consistent with the Ontario Human Rights Code, injured workers are to be offered re-employment in the form of modified work, and where necessary, in modified workplaces provided this does not cause undue hardship to the employer.

As promised, these four amendments are among those tabled here today. Their inclusion provides important assurances that the system will operate impartially, justly and in accordance with the objectives of the bill.

I will now describe other amendments I am tabling with this committee today.

As committee members will recall, Bill 162 currently makes provision for supplementary benefits to be paid to injured workers before the bill becomes law. However, as drafted, it restricts eligibility to those workers whose disabilities are significantly greater than could normally be expected, given the nature of those injuries.

We are proposing an amendment to delete this restriction. We believe that a bill designed to improve the future must nevertheless address in a reasonable way all of the inequities of the past.

Under the amendments, all permanently disabled workers suffering an economic loss and receiving compensation under the current legislation will be eligible for the supplementary benefits created by Bill 162.

En vertu de ces amendements, tous les travailleurs atteints d'incapacité physique permanente qui ont subi des pertes économiques et qui reçoivent une indemnisation selon la loi actuelle auront droit aux prestations supplémentaires créées par le projet de loi 162.

We anticipate that this will result in eligibility for approximately 4,900 more permanently injured workers.

It must be emphasized that the amendments will also extend to this group of injured workers eligibility for both vocational rehabilitation and full temporary supplementary benefits while a worker participates in a WCB-approved vocational rehabilitation program.

Our amendments also propose further changes to the provisions of the bill that relate to noneconomic-loss awards. First, we will respond to concerns expressed about the limitation the bill places on the number of times a worker can request a review of the noneconomic-loss award in recognition of an unexpected change in his or her physical condition. We remove this restriction with an amendment that gives injured workers the right to request a review of their noneconomic-loss awards when they believe they have suffered an unanticipated significant deterioration of their condition.

In addition, if workers or employers are dissatisfied with the results of the review, they will be able to appeal the decision to the Workers' Compensation Appeals Tribunal.

These changes will ensure that awards for noneconomic loss will be fair and just for the lifetime of the injured worker. They address the concern that an arbitrary limit on possibilities for reviewing situations of unanticipated physical deterioration could, in a very small number of instances, lead to unfairly low awards for noneconomic loss. The beneficiaries of this change are most likely to be workers who suffer a permanent injury early in their working lives.

A further amendment will make clear the choice that injured workers have in determining how they wish to receive the noneconomic-loss award. If the amount is \$10,000 or more, an injured worker can elect to receive the award either in a lump sum or in monthly payments over his or her lifetime. Amounts under \$10,000 will be paid in a lump sum.

Un autre amendement vient préciser que les travailleurs blessés auront le choix de déterminer la façon dont ils souhaitent toucher leurs prestations pour pertes non économiques. Les travailleurs blessés qui ont droit à une indemnisation de 10 000 \$ et plus peuvent choisir de la toucher en un seul montant forfaitaire ou sous forme de versements mensuels viagers. Les indemnisations de moins de 10 000 \$ seront payées en un seul montant forfaitaire.

This amendment provides recipients of substantial awards with the flexibility to make sound retirement decisions. It gives them the choice to invest a lump sum independently or to receive payment in the form of a lifetime pension from the Workers' Compensation Board.

As drafted, Bill 162 exempts the construction industry from the re-employment obligations it creates on employers. This is because the industry's work patterns, combined with its hiring hall system, present very significant problems for the practical implementation of a workable reinstatement scheme. However, we have heard concerns expressed about their exclusion and we are determined to find ways to bring re-employment protection to construction workers.

As a result, an amendment providing for the obligation to re-employ will be extended by regulation to the construction industry. The regulation will be developed in consultation with representatives of employers and employees in that sector.

As you know, the dual award system established by Bill 162 requires that criteria be articulated to calculate the impact of an injury on a worker's future ability to earn. This is central to a sensitive and effective wage loss system.

Bill 162 sets out specific statutory criteria to guide and direct judgements relating to the economic consequences of permanent work-related injuries. Among these criteria, for example, are the personal and vocational characteristics of an injured worker, his or her prospects for successful rehabilitation and the existence of suitable and available employment that the injured worker is capable of performing.

Of all these criteria, the determination of what constitutes suitable and available employment will be a critical factor in assessing a permanently injured worker's future earning capacity and, subsequently, the amount of his or her award for prospective loss of earnings. This has been recognized throughout your committee's hearings, where the bill's treatment of the issue has been hotly debated.

As you know, the bill requires the board to define clearly through regulation the term "suitable and available employment." It further requires that the regulation be approved, of course, by the Ontario cabinet. In addition to this, our amendments will specify factors that the board will have to take into account in establishing criteria for determining what constitutes suitable and available employment for injured workers.

The purpose of this amendment is to ensure that decisions concerning the future loss of earnings of injured workers are based on real-life situations of those workers in the real-life contexts that confront them following a workplace injury.

I am proposing an amendment as well to provide greater certainty as to the bill's intent that awards for loss of earning capacity will be paid until the age of 65. As committee members know, some concerns were expressed that the bill as originally drafted might allow the WCB to discontinue future loss-of-earning benefits before a recipient reached age 65. This amendment will address that problem.

Another amendment will clarify the government's intent that every injured worker who is receiving or has received temporary benefits is eligible for the vocational rehabilitation provisions of the bill.

Un autre amendement vient éclairer l'intention du gouvernement d'offrir, à tous les employés blessés qui touchent ou qui ont touché des prestations temporaires, l'accessibilité aux programmes de réadaptation professionnelle prévus dans le projet de loi.

I am also proposing amendments that will give further definition to the kinds of services related to vocational rehabilitation that the board will provide to injured workers from the time of their injury.

A related amendment will clarify the contents of vocational rehabilitation programs that the board will provide when determined to be appropriate to help in recovery and return to work of injured workers.

Together, these will respond to some confusion that was evidenced during the committee's hearings as to the precise nature of the vocational rehabilitation rights and obligations that are set out in Bill 162.

1550

In addition, improvements are also being proposed to the provisions of the bill relating to re-employment. For instance, an amendment is proposed to



clarify that an employer's obligation to re-employ a rehabilitated worker will begin as soon as the worker is able to perform suitable work.

As committee members know, the bill stipulates that the re-employment obligation will remain in effect for two years. However, the language of the bill permitted the interpretation that employers could wait until this period was about to expire before re-employing an injured worker. This was never the intention of the bill and we are amending it to eliminate any such interpretation.

Another adjustment will confirm the original intent of the bill that the re-employment provisions are not to interfere with seniority rights established in collective agreements.

The government is also proposing an amendment to clarify the terms of a provision known as the "older worker minimum." We wish to make it absolutely clear that workers 55 years and older can choose to forgo the process of determining a loss-of-earnings award and receive instead compensation equal to the full monthly pension payable under the Old Age Security Act.

Nous voulons nous assurer qu'il est clair et net que les travailleurs blessés de 55 ans et plus peuvent s'abstenir du processus de détermination des prestations pour perte de revenu, pour toucher plutôt une indemnisation égale au montant total de la pension mensuelle à laquelle ils ont droit selon la Loi sur la sécurité de la vieillesse.

As committee members will recall, the provision as originally stated guaranteed that an older worker who is unlikely to return to work, but still too young to receive retirement benefits, could get a loss-of-earnings award that would at least equal payments under the Old Age Security Act.

There was some concern, because of the way the provision was written, that this "older worker minimum" could be used as a ceiling for the loss-of-earnings benefits paid to a worker aged 55 or older. That was not intended. In fact, the opposite is true; the provision was intended to ensure that older workers would have an alternative that could pay them an award larger, not smaller than the one they would receive through the assessment process.

The amendments I have outlined here today illustrate that the government has listened attentively to the public debate on Bill 162. As I mentioned at the outset, my remarks have not dealt with amendments of a technical nature, so I commend for your examination the full text of the amendments that have now been tabled.

In developing its refinements to the bill, the government has examined carefully all of the representations that were made. These amendments reflect many of those representations and will make Bill 162 a more effective instrument for improving the workers' compensation system in Ontario.

However, some representations are not reflected in the amendments where the government concluded that a response was not warranted. For example, some parties raised concerns that consideration of a worker's age in calculating the noneconomic-loss award violated the Charter of Rights and the Human Rights Code. The government is satisfied that this is not the case. The ultimate worth of an injured worker's award for noneconomic loss will be determined by sound actuarial principles.



To sum up, let me again emphasize that the government's intent through Bill 162 is to make Ontario's workers' compensation system fairer and more effective both for workers and employers.

En résumé, j'aimerais à nouveau insister sur le fait que le gouvernement, appuyé par le projet de loi 162, a l'intention de rendre plus équitable et plus efficace, autant pour les travailleurs que pour les employeurs, le système d'indemnisation de la Commission des accidents du travail.

It draws its strength and integrity from a set of fundamental principles: that permanently disabled workers should be fairly compensated both for their loss-of-earnings capacity and for their loss of enjoyment of life, that such workers should have early access to the vocational rehabilitation they need to help them return to the workforce and that they should be reinstated by their employers as soon as they are able to perform suitable work.

Finally, but certainly no less important, Bill 162 also espouses the principle of cost neutrality. In essence, its reforms will be achieved through reallocation of the already considerable funds within the system rather than through any large increase in costs at this time.

In closing, let me say that I look forward to the process of clause-by-clause consideration and to the continued constructive work of your committee. Let me congratulate you, Mr Chairman, and the members of the committee for the process of public hearings that took up so much of your spring this year.

The Chairman: Thank you. The committee members did indeed work hard during the hearings and they are to be commended.

Does the official opposition wish to respond or to make a separate statement?

Miss Martel: Yes, we do. I will let the first response go to Mr Rae.

Mr B. Rae: Perhaps I can just start by reflecting not only personally but also perhaps on behalf of the whole party on the importance of this issue for us. The very first cases I handled as a law student flowed from the West End Young Men's Christian Association, at the corner of College and Dovercourt in this city, dealing with the Workers' Compensation Board. That goes back 15 years.

All members in our party, who for a generation now have made the reform of compensation one of our most important priorities, had, I think it fair to say, some hopes that after many years of wandering in the wilderness, where we found it extremely difficult to get any substantive reform, we would be able to make improvements.

I think the bill is so bad that it should be withdrawn. That was our position when it was first proposed by the minister. That remains our position today in response to the minister's amendments that he has announced this afternoon. Nothing that the minister has announced, in my judgement, speaks to the basic problems with the bill or the basic problems facing people who are on compensation.

In saying this, this means that we recognize that we are going to be in

for something of a battle with the government, because it obviously has a different view about the bill and a different view about what needs to be done.

I would make the observation that I cannot think of a time in recent history, certainly in my memory in politics, when a bill dealing with compensation has been introduced that was so unacceptable to injured workers themselves, as they have been able to express themselves politically, or so unacceptable to the labour movement, which has traditionally been very much involved in proposing reforms and in being on side with reforms that have been proposed.

This is the first major change, literally since 1914, which will produce lower benefits for many, many workers, because the minister is admitting today that the cost neutrality of the system will be maintained, which can only mean that some injured workers will be earning less in future than they otherwise would have earned under the old system and that the money is being redistributed, in effect, from some injured workers to pay for benefits to other injured workers. That is the basic philosophy which the government has introduced.

This scheme is not a new scheme. It has been kicking around the Ministry of Labour for many, many years. It is not a scheme that is unique to this minister or this government. It flows, as we all know, from the work of Professor Weiler. It was part of the discussions that took place when Mr Elgie was the Minister of Labour. I know perfectly well that Mr Elgie was an enthusiast of this particular proposal back in those days when he was Minister of Labour, but he could not sell it, so it basically stayed on the shelf for a considerable time. Then it was sold to this particular Minister of Labour, who then sold it to the cabinet, which is now trying to sell it to the injured workers and the people of the province.

#### 1600

Let me just outline for the minister, as clearly as I can, the reasons why we object so strongly to this legislation and why the changes he has proposed strike us as in no way a response to the criticisms which have been made of the bill. The fundamental opposition to what has been done is that it transforms the Workers' Compensation Act from a law which guarantees rights and which guarantees certain outcomes; which was the original bargain struck in 1915 in exchange for giving up the right to sue; one had the guarantee of a life pension with an amount that would be fixed certain. Subsequent to that, some amendments were added over time adding supplements to the fixed certain amount. The policy of granting supplements was one which we argued for, and indeed have argued very extensively for. It was only when they were taken away in 1987 that we began to see the writing on the wall in terms of the attitude of this particular Liberal government.

In exchange for a lifetime pension of a fixed amount, the government has substituted what it calls a dual-award system. What is the dual-award system? The dual-award system is one where the fixed amount, the amount, if you like, that workers can count on, that they can argue for, that they can make a legal case for—they can make whatever case they want to in front of doctors and the doctors themselves can respond to various medical opinions—is now reduced to a totally minuscule amount. That amount is minimal, and it is set out in the act in terms of what it will be, described as the compensation for a worker's noneconomic loss, set out in section 45a on page 6 of the new bill. I will not read it for members. They are fully aware of what it involves, but I think it is important to recognize that in comparison to the previous amount certain,

it is a pittance. It is a pittance in comparison to the amounts that were previously being talked about.

I heard the minister today talking about how the government was going to be very flexible in terms of how people could have this amount paid, that they could choose as to whether it would be paid by lump sum or in a monthly amount. There is almost a kind of tragicomedy to these things. There is certainly a comic element to the way in which the board operates, for those of us who have had to deal with it from time to time.

I can say to the minister that when he talks about giving them the choice to invest a lump sum independently, I do not know too many injured workers who make investments, period, except perhaps to try to save their houses when faced with the consequences of an injury. If you are saying that you can decide that with a few thousand dollars here, you will take it in a lump sum or you will take it every month, this is not my definition of choice. The bottom line is that the fixed amount that is going to be given by the government is drastically reduced and that amount is still going to be fixed by the meat chart.

The second point I want to make is that the next amount that will be argued about, that workers will be going to the board about, that they will be appealing about, that we know all the litigation and all the appeals essentially are going to be about—there will not be a hell of a lot to argue about medically any more, in terms of what the fixed amount is going to be, because the lump sum is so small. Where the substantive arguments are going to be, I would suggest, is with respect to section 45a and the question of what workers are likely to be able to earn after the injury in suitable and available employment. Here is where I think we make our basic philosophical point.

Our basic political difference with this government is that we do not like to see the board transformed into a welfare authority, and that is essentially what it is going to become. I could compare the welfare legislation in this province in terms of how welfare is granted, how it is going to be awarded and how judgement calls are made by various welfare officials; in terms of turning down employment and not turning down employment, it is precisely parallel in language and in intention to the language of this act.

Hon Mr Sorbara: No, it is not.

Mr B. Rae: I did not interrupt the minister. He may disagree with me and we have an opportunity to express those differences in the Legislature. He can do it here if he likes, but I am just saying to him that we all know how administrators will look at this thing.

Listen to the wording on page 8 in section 45a:

"For the purposes of subsection (2), in determining the amount that a worker is likely to be able to earn in suitable and available employment"—not the amount that he is earning in fact in a specific, real job that he or she is doing, but in a job that it is deemed, said or alleged that a worker is able to do—"the board shall have regard to,

"(a) the net average earnings, if any, of the worker at the time the board determines compensation under this section;



"(b) any disability payments"—so we have the stacking of benefits, which we as a party have resisted for a generation—"the worker may receive for the injury under the Canada pension plan or the Quebec pension plan;

"(c) the personal and vocational characteristics of the worker"—if you think you have added any precision to the discretion of the board by adding the phrase "the personal and vocational characteristics of the worker," I cannot agree with you; you are assuming large areas of latitude that will be exercised by the board;

"(d) the prospects for successful medical and vocational rehabilitation of the worker"—a judgement call;

"(e) what constitutes suitable and available employment for the worker"—again an extraordinarily wide area of latitude, judgement and decision by individual board officers on the basis of board policy and regulations that are set down; and

"(f) such other factors as may be prescribed in the regulations."

I do not think we can honestly say we have added a whole lot in terms of the rights of injured workers or the precision and knowledge of injured workers as to how they are to make a claim against the decision of a board officer that the judgement is: "We think this is your personal characteristic, Sam; we think this is your vocational characteristic; we think these are your prospects; these are what we think 'suitable and available employment' constitutes for you."

As Miss Martel has pointed out on a number of occasions, we do not have to go to outer space to find examples of where this is being done. We can look at real-life examples right now where the board exercises its discretion in deeming in this province. She has raised those cases also in the speech she gave on second reading, where she pointed out the number of cases in other provinces where this philosophy is being introduced and imposed and where it is causing enormous hardship, because the board is saying: "You can do this and you can do that. We think you can make this much. We think this is how much you are entitled to; therefore, that is what you are getting."

As far as I am concerned, the lines are drawn. Either you have this in place, in which case we give the board enormous capacity to act as a kind of welfare agency over injured workers, or we have a very different system in which workers have rights which are enforceable, clearly expressed in legislation and clearly understood by everybody involved in the process.

The other sections the minister, the member for York Centre (Mr Sorbara), has talked about today—and I want to touch on them briefly if I may—are the questions of the obligation to re-employ as well as of the right to rehabilitation.

In terms of the right to re-employ, I think it was one of the first days after legislation was introduced that I spoke to the minister in the House about the double standard with respect to the construction industry.

I hope you will appreciate my point when I say that I do not take a whole lot of satisfaction in looking at the new wording of the bill with respect to the construction industry, when it says that "employers engaged primarily in construction shall comply with such requirements to re-employ workers who perform construction work as may be prescribed in the regulations



and subsections (4) to (8) do not apply in respect of such employers in respect of such workers."

As a member of cabinet, he may feel this is a tremendous achievement. For the rest of us and for construction workers it is not. We have no idea what that means. We have no certain rights being applied for construction workers. No construction worker can go back to his employer and say, "As a result of the amendment that Mr Sorbara has introduced, I know that I am going to have my job, that I have a right to reclaim it and that the employers have an obligation to hire people who are injured and who have been injured on the job." No such rights are contained in this legislation and this act. So I do not think we have made the kinds of improvements that the minister might like to claim.

1610

Finally, with respect to vocational rehabilitation, the critical section remains. The critical section on vocational rehabilitation is contained in subsection 54a(3), which says, "the board shall provide a worker contacted under subsection (2) with vocational rehabilitation services if the board considers it appropriate to do so."

That is a giveaway clause. It is a complete giveaway. It means, in simple layman's language, that the board will do whatever it wants to do. The board has to phone up a worker and has to contact the worker. Once the worker has been contacted, that is all the board has to do. The board is under no increased obligation to provide vocational rehabilitation as a result of this section. There is not a single worker who can use this section, go into the board and say, "You have an obligation to provide me with services, and you are not currently doing so."

I would make the observation, and I think it is one that is shared by a great many people who do workers' compensation: My constituency office, like that of many members, is literally inundated with cases dealing with the Workers' Compensation Board.

One of our chronic problems is that people do not get vocational rehabilitation. It is not that they are not contacted, it is that the board has no conception of its obligations with regard to vocational rehabilitation. It can put a worker on pension, and having put a worker on pension, then feels it has discharged its obligations to the worker.

When we contact them and say, "This person should be a candidate for vocational rehabilitation," they will simply say: "We do not have time. We are overworked. We cannot take this person. It will be eight months before we can see this person." Or they will say, "In our opinion, this person is not a suitable candidate for vocational rehabilitation." And that is it. That is all they have to say. We can appeal. You can say, "We are going to appeal this one," but there is nothing in the law which provides for a hook, a guarantee, for the worker who is affected by such a decision with respect to vocational rehabilitation.

This section, the section I have just read, is not a charter for the worker, it is a charter for the board. Again, it is the board that is being allowed to say: "We do not consider it appropriate. Under subsection 54a(3), we have determined that you are not a suitable candidate for vocational rehabilitation."

So where are we? We spoke at the beginning of this thing and said, first of all, it was unbelievable to me and to us that the government would act, in a sense, unilaterally. It would introduce the most radical changes to workers' compensation since 1915. That is no exaggeration in terms of the changed philosophy of the act. This is the first time that the principle of the act has been changed and transformed.

They would do this without the consent or consensus of people who are going to be affected by this legislation, without the consensus of workers in the construction trades, representatives of workers through the labour movement and whole groups of injured workers who have been advocating and active before the Workers' Compensation Board now for 20 years, since the late 1960s, when this activism among injured workers began. This entire movement has utterly rejected the proposals that are being made by this majority government.

We then have, as I have described it, a deeming provision; a transformation of the board into a welfare board; a power given to the board now to deem what it thinks is suitable and available, what it thinks are the appropriate characteristics of the worker and how that is going to be implemented in this new bureaucracy; a reinstatement right which is minimal at best and which still excludes thousands of workers, and no rights with respect to vocational rehabilitation.

If you look at the Majesky-Minna report, if you look at the work that has been done by all kinds of observers of the system, it would be that workers have to have rights. Workers have to have the sense that they have some leverage in the system, that they have some capacity to change the system and that the law is there to give them that capacity and that leverage, faced with the bureaucracy which is now, with the approval of the minister, going to be as concerned as it always has been with saving money, restricting costs and keeping premiums down.

Unless workers have the benefit of clear legislation which gives them rights, then I can tell you the pressure on the board from year to year will be, "I'm sorry, this year we don't have money." Informal quotas will be established about how many workers will get what kind of counselling and where they will go, and it will all be done on the basis of what it costs and how much money can be saved.

First, I can say to the minister that no issue has been more important to me personally in provincial politics in the last 15 years than this question of workers' compensation and creating a fair system. This legislation is a travesty of unfairness and a travesty in terms of what it sets out to do and what it alleges to do compared to what it in fact does.

But that is even less important, I say to the minister, than the sense of political conviction that our whole party has. It has been expressed by our critics and by the people who have been with the committee from the beginning that this issue is not going to go away, that this approach is entirely wrong and that we intend to fight it using every legal parliamentary means at our command. And that is precisely what we are going to do.

The Chairman: We were going to move to the response from the third party, but Mrs Marland did indicate that we should go ahead if she was tied up in the Legislature, so I think we should proceed. I am, however, very uneasy about proceeding in clause-by-clause without the third party being here.

That gives the members a couple of choices. We could carry on a broader debate on the bill and let the minister respond to Mr Rae if he wishes, or we can adjourn and proceed with the clause-by-clause on Monday. It would be an uneasy precedent for the committee to proceed without the third party in clause-by-clause. Mrs Marland did say to proceed, but I hesitate to do so.

Mr Dietsch: I would agree with your analysis of the situation as it is before us. I think the opportunity is here if the minister wishes to respond to Mr Rae's comments.

The Chairman: Is that suitable to the committee?

Mr Wildman: I have no objection to that. I agree it would be difficult and inappropriate, really, to go into clause-by-clause without a representative of the Conservative caucus.

The Chairman: Okay, let us proceed. Does the minister wish to respond?

Hon Mr Sorbara: I will just keep my response as brief as I can, and it may well be that members of the committee have questions of me on the general theme and thrust of the amendments. The package of amendments is very substantial and I know the committee members—

Mr Wildman: How many amendments have been tabled?

Hon Mr Sorbara: We did not count them, but they are substantial, as I said. Some of them are technical, but the vast majority are substantial.

Mr Mackenzie: They are going to need an awful lot of clarifying.

Mr Wildman: There are 60—some pages, and some of that is just explanation of the amendments, not the amendments themselves.

Hon Mr Sorbara: The reason why we are here today and proposing clause-by-clause a little later on is precisely to give you an opportunity to go through the amendments.

Just to respond very briefly to Mr Rae's comments about a dramatic change in the system, I think it is important that committee members understand that while this is a very significant reorientation of the way in which compensation is provided for workers who suffer a permanent partial disability, we are dealing with some 10 to 12 per cent, roughly, on average, year by year, of the work that the board does.

1620

I have noticed during the debate that there has been a suggestion that Bill 162 completely changes the workers' compensation system. In fact, it was the government's determination, having heard submissions that there should be a royal commission on workers' compensation, that we should completely tear down the building and create a new structure. The government's determination was not to do that, but to proceed with an important but discrete package of reforms that dealt with three very troublesome areas: compensation for permanent partial disability claimants, the whole question of rehabilitation and the question of rights of reinstatement.

Mr Rae referred to the original bargain in workers' compensation back in



1914. Frankly, I believe that the prospective wage-loss system that is created for permanent partial disability claimants in this system reflects far better than the current system what that original bargain was.

Mr Rae talked about a system that guarantees rights and outcomes. The problem with the current system is that while it guaranteed rights, it has and continues to have, until these amendments are passed, outcomes that are skewed. He said that some workers will be earning less. The whole purpose of these amendments is not that workers will be earning less, but that their loss in capacity to earn is fully made up. By God, if you go back to the original bargain, that is what it was all about.

Just compare the statutory language that we are dealing with. Right now, as I think all of you know quite well, the law as it stands provides that workers who suffer permanent partial disabilities are to be compensated on the nature and extent of the injury. That is what the current section 45 says now. You look at the injury and then you determine what the compensation will be based on whether it is a damaged arm, the loss of the sight of an eye or a back that is permanently injured.

Now, what is the charging provision in the bill? It is not the provisions that the leader of the opposition read. The charging provision in the bill is this, and I want to read it into the record: "A worker who suffers injury resulting in permanent impairment or resulting in temporary disability for 12 continuous months is entitled to compensation for future loss of earnings arising from the injury." That is the difference.

When all is said and done on this bill, what we are really talking about is whether or not we are going to have a PPD system that compensates people on the basis of the nature and extent of the injury or, as the bill says, the "future loss of earnings arising from the injury." So yes, some people will receive less benefits; not earn less, but receive less benefits. Those who have returned to work and continue on an earning pattern that is equal to or better than what they experienced prior to the accident, as we said from the beginning up front, will receive fewer benefits in this system.

We think that was the original intent of the system. We think that is why the workers' compensation system was created, not to measure the nature and extent of the injury and then put a price on it. I believe as minister—not because Bob Elgie believes or because this system has been around and discussed for a while or because Paul Weiler has written on it—and my government believes that we are talking about a system that should compensate people for their loss in earning capacity when they have permanent partial disabilities. It is ten per cent of the system, but it is ten per cent of the system that is currently broken.

There has been extensive debate and discussion on the whole issue of deeming. The question is whether the board will arbitrarily determine what the worker should be earning after the accident. I admit that that is a sensitive question. On the other hand, I believe, particularly through the amendments that we have provided, that the balance in every case should be on the side of the worker, and it is already in the statute.

Does that mean that every single decision about what the worker is likely to be able to earn in suitable and available employment will be perfectly just, particularly at first instance? The Leader of the Opposition (Mr B. Rae) is right: There are just ordinary people at the Workers' Compensation Board trying to do the best job they can. Mistakes will be made.



That is why we have a Workers' Compensation Appeals Tribunal. We fully expect that there will be a body of law developed, based on the statutory language, that ensures that decisions are not based on some sort of phantom deemed job, but based sensitively on the real realities of the individual. The whole thrust of the drafting of this legislation is towards that end. I want to tell committee members that our own discussions in the ministry have been to the effect that we must do everything we can to make sure that the decisions are fair and reflect the realities of each individual worker in his or her individual working circumstances.

One could go the way that some have advocated before the committee, those who do not like the dual award system, and say that one does not look at the ability to earn, one looks at whether or not that worker is earning. But frankly, there you have a system that is completely skewed on the basis of what the injured worker chooses to do post-injury, and that is not what this system is about either.

Mr Rae talked about the re-employment provisions, particularly those provisions relating to construction workers. I must say, first of all, that the re-employment provisions in Bill 162 are as strong, and stronger, than the only other province in Canada that has provisions relating to re-employment, and that is the province of Quebec. Admittedly, at first instance, we left out the construction workers because of the difficulty there. Admittedly, they are still, as of the date the bill is passed, left out. Why is that? The answer is that we have consulted both with representatives of construction workers through their various unions and employers, and we have not yet reached a consensus as to how it would work.

In some instances, they have already worked it out on an ad hoc basis. We are determined to capture a system of re-employment for construction workers that will work. So we are going to have a consultative process. We believe that a consultative process can result successfully in a regulatory system for the re-employment of construction workers that really will work. It will not just satisfy a political need or a constituency, but really will work to help injured workers return to work subsequent to an injury. Frankly, that is not an easy challenge, because far too often, the injuries of construction workers in this province are the most serious injuries that any worker is likely to suffer.

On rehabilitation, I really regretted the fact that the Leader of the Opposition read just one provision, the final provision, which, yes, gives the board some discretion, but it is important to read all the other provisions and particularly the amendments we have proposed, because we put a statutory obligation on the board to have a vocational rehabilitation assessment.

Yes, maybe what Mr Rae is saying has been true in the past: The worker or his representative phones up, and the board says, "We are not interested right now in giving you vocational rehabilitation or anything like it." What this statute says is that the board is required to do a thorough assessment of vocational rehabilitation needs.

Very often, those assessments will be done by outside agencies, perhaps in most cases by outside agencies. So you might ask, why is that final discretion left there to the board? It is because ultimately a decision has to be made. If an outside agency says, "We think this person, notwithstanding that he has A, B and C talents, should have a vocational rehabilitation that is X, Y and Z," somebody has to make the decision whether that is an effective assessment. It is the job of the board, the very nature of the board's work,

to make those difficult decisions. But remember that the board, in its decision-making capacity now with these provisions, is subject to the review of an independent tribunal.

1630

If the assessment is bang on, that that worker really could benefit by this program, and the board arbitrarily says, "No, no, we don't think that's the case," the worker has an opportunity to go to the tribunal and say: "Look, here's the assessment and here are my real-life circumstances. Surely to God the board made an error in deciding that I shouldn't have this vocational rehabilitation program."

What will happen over the course of time? A body of law will develop and the board will become hopefully, and I believe strongly in the fullness of time, a more effective agency of rehabilitation.

The bill, as it was presented, admittedly did stop short of putting any requirement there. The amendments that you see before you are substantial. They are very significant, and I think they respond very effectively to what we heard. They do not, admittedly, put a statutory obligation on the board to provide vocational rehabilitation in every instance of an assessment. But that certainly would be putting the business of determining the need for vocational rehabilitation right out of the board's hands and into the hands of that collection of agencies—very good, in most instances, in the province—that do vocational rehabilitation assessments. Those agencies, after all, are staffed and peopled by the same people who are at the board; they are not very different as human beings. They make determinations, they make analyses and they try to do the best job they can.

Ultimately, what we have here in this statutory framework is a brand-new beginning in the area of vocational rehabilitation for the board. I expect that the board will become, as a result of this initiative, a board that develops outstanding expertise over the course of the next few years in the very challenging and difficult work of vocational rehabilitation. Let's not have any doubts about that. An injury to a worker can be devastating in every aspect of his life. The business of rehabilitating that individual can be the most challenging work that any agency, body or individual takes on.

Finally, on the question of consultation, this has been the subject of a very long debate since the bill was introduced. The Leader of the Opposition is right that this province has been involved in a discussion about a dual award system and replacing the current meat chart system for PPD claimants for a very long time. There has been a wide variety of views. Some have been opposed to it from the beginning and some have had a variety of views, depending on different models. But there has been discussion—long, active and I think very effective discussion.

My predecessor commissioned yet another study on the whole question of permanent partial disability in the workers' compensation system, a report that we refer to as Weiler 3. Certainly the business of vocational rehabilitation has been the subject of a good, long debate in the province. I believe, although others will tell you differently, that what is in Bill 162, as amended by the amendments we have tabled, gets us if not right into the Minna-Majesky report, as close as it is appropriate to get into it at this point in time.

Yes, we are trying to do this on a basis of utilizing the resources, the

assessments that are already in the system. But let us not pretend in this province that we are dealing with a system that is dramatically under-resourced. We happen to have the very highest premiums, assessments of employers, of any jurisdiction in Canada. We bring lots of money into this system, some \$2.2 billion in 1988, very significant resources. We do happen to have the very highest awards in Canada on a per claim basis. The average award under this system is \$6,500 per claimant, all awards for all types of injuries put into place.

Ask yourself what the next highest province is in terms of average award. You would be right if you said Quebec because its industrial base is similar to ours. Its average award is just over \$3,000 per claimant. It is not as if we have a system that has historically been dramatically undergenerous; it is that we have had a system that has had some very significant administrative problems, a system that has in some cases acted arbitrarily.

We believe that in the amendments in Bill 162, together with the amendments we have proposed today, we will give the Leader of the Opposition (Mr B. Rae) a system that the workers in his community and all over the province will find more sensitive and more responsive to their individual needs, and that is the reason this bill is before you today.

Mr Tatham: What has the experience been in rehabilitation in other jurisdictions? What rights do the workers have, and how successful have they been, say, in Quebec or Saskatchewan?

Hon Mr Sorbara: I do not have the other act with me right here. I can bring that information to you.

My impression, if I recall what we have examined and what I have seen myself with respect to other jurisdictions, is that the province of Quebec is the only one that has a statutory obligation to provide vocational rehabilitation. If you look at their act, the charging provision, the one that gives the rights for vocational rehabilitation to the claimant, is very broad. Then, through a variety of statutory provisions, it is narrowed down very significantly, so in the end there is not, I would say, the substantive rights that exist in Bill 162.

Counsel is here at the table, and Dick Clarke, whom all of you know, is here at the table. I would not want to comment on any other provinces. If they have more information, I invite them to bring it forward. If not, we will get it to you as soon as we can.

The Chairman: On that note, I should have introduced Laura Hopkins, the legislative counsel who will be assisting the committee.

Mr Dietsch: You always forget to introduce the pretty girls.

The Chairman: I know.

A motion to adjourn would be welcome.

Mr Wildman: Is it in order to ask any further questions of the minister?

The Chairman: If that is the wish of the committee, sure. We had agreed we were not going to go into clause-by-clause today, though.



Mr Wildman: The minister did indicate he would be willing to answer questions.

The Chairman: That is fine.

Miss Martel: I have a question concerning rehabilitation. In the statement the minister just made, he pointed out that it was his opinion that "the substantial amendments presented here in terms of rehabilitation reflect what we heard at the public hearings." I am just wondering if we were at the same public hearings, because I can tell him that what I heard at the public hearings was that rehabilitation had to be a statutory right. That came not only from the injured workers' side but also from the employers' side.

Members of the committee will remember what Jack Corrigan, the Inco benefits officer, said to us while we were in Sudbury. He also pointed out that in fact much of what appeared here came as close as possible to what Majesky-Minna had recommended.

I have the recommendations here in front of me and I would like him to tell me perhaps, if he can—I do not know if he has them in front of him—where exactly the recommendations of Majesky-Minna are incorporated into this bill.

As minister, you did not even take their first recommendation, which was to change the name of the Workers' Compensation Act to the Workers' Compensation and Rehabilitation Act. You could not even start with number one of 84 recommendations, so I would like to know what your view is or how you see that their recommendations are incorporated into this bill.

1640

Hon Mr Sorbara: I will just answer that last little comment first. I do not think you make real changes by changing the name of an organization or an individual. I think you make real changes by changing the direction and the statutory framework within which individuals needing rehabilitation are to operate.

I think the significant difference between what the Minna-Majesky task force recommended and what is in Bill 162, as amended by the package you have seen today, is that Minna-Majesky recommended that every worker who was out of work, who was away from work, as a result of an injury for 30 days or more have a right to vocational rehabilitation.

The simple problem with that recommendation is that it did not create a context within which to make decisions about whether an individual needs vocational rehabilitation. If you create a system that says the threshold is 30 days, and the person does not need it, what you do is create a system that inevitably will waste resources on those who do not need vocational rehabilitation.

I can suffer an injury that will result in a broken leg and keep me away from work for 45 days. My leg may be perfectly suitable to return to work after 45 or 50 days. I can go back to my job. But what Minna-Majesky said is that that person, by virtue of the fact he has a serious injury that keeps him away from work for 45 days, has a right to vocational rehabilitation. Do you know what that means? That means to have a full supplement, 90 per cent of pre-accident earnings, during the period of vocational rehabilitation, and to



have a program, conceivably, that suits what that worker wants to do post-injury.

Surely to God you are not advocating a system like that. Surely to God we have to constrain. We have to have some sort of statutory framework to say: "There are people who have been denied vocational rehabilitation. We do want a system that is better. But ultimately the decision has to be within the context of appeal and discretion, a system that directs those resources to those who need them."

Do you know how much the board spent last year on rehabilitation in all? Over \$200 million, a very substantial amount of money.

Miss Martel: Why do you not put it in the context of the overall budget? Then the figure is about three per cent.

Hon Mr Sorbara: Maybe or maybe not, but what I am saying is that there were very serious flaws in that provision of Minna-Majesky. The flaw was that it did not provide a statutory framework within which to decide who should and who should not. Surely to God there are plenty of workers who have been off work for 35, 40 or 70 days who will reach maximum medical recovery, and the most appropriate vocational rehabilitation for them will be to go back to their jobs. If you tell them they have a statutory right to vocational rehabilitation, and they do not like their jobs, they would be nuts to turn it down.

To do that would turn the workers' compensation system into a major new labour adjustment mechanism in the province of Ontario. I think we need labour adjustment mechanisms desperately in this province and this nation, but I would not want to do it through the workers' compensation system.

Miss Martel: I am going to go back and say I do not think you read much beyond recommendation 13 of Minna-Majesky, which said they had a statutory right, because they did in fact provide the whole framework whereby that could happen. Their use of the 30 days was to make sure that if the worker was not back, he would be seen by a rehabilitation counsellor to determine not only what his vocational future was going to be, but what medical services he required, what economic services he required in terms of counselling, what social services his family may require, etc.

If you go into the case management section of Minna-Majesky and the recommendations, they set out an entire case management method whereby injured workers, even if they were going back to their original jobs, would at least have been contacted and seen to determine if they needed any other thing in terms of counselling, what kind of medical rehabilitation they required, etc.

Hon Mr Sorbara: That has been provided in the bill, except we have chosen 45 days rather than 30.

Miss Martel: No, you do not. All you do at 45 days is give him a phone call: "How are you doing? See you later." Six months later—

Hon Mr Sorbara: That is what the statute says. You know very well that in virtually every bill we pass in this place, statutes do not provide those sorts of specifics. The program material is not something we are going to capture in legislation. Let us be serious about the criticisms of the bill.

It is not just a phone call. The amendments proposed today make that even clearer.

Miss Martel: No; I think you are quite wrong. All he has to do—

Hon Mr Sorbara: If you characterize it as a phone call, I think you just do a disservice to the legislative process.

Miss Martel: That is exactly what happens. You have a contact, or the rehabilitation counsellor shows up at the door. There is no further obligation anywhere in this bill, in this legislation, that provides any further service to that worker. Six months later, if he or she happens to be off work, we have an assessment. Whoop-de-doo.

That does not guarantee rehabilitation services at all. So it is quite improper for you to tell the committee here that in 45 days a whole chain of events is going to be set in motion, because that is not what happens under the bill. And no, I do not believe it is going to happen at the board either. Given what Minna-Majesky found in terms of rehabilitation, there is no way I would believe the board is going to act any differently, with or without this amendment.

Hon Mr Sorbara: Let me read you the statutory language then of the amendment, "Within 45 days after notice of an accident under section 20 is filed, the board shall contact a worker who has not returned to work for the purpose of identifying the worker's need for vocational rehabilitation services."

Miss Martel: Right.

Hon Mr Sorbara: Subsection 4 says, "Vocational rehabilitation services provided under subsection (3) may include consultation, the provision of information and the planning and design of a vocational rehabilitation program." Yes, you are right, I guess we could have incorporated by reference some of the programmatic design in the Minna-Majesky report, but I just do not think that would have been appropriate. Frankly, I have never seen it done in any other statute I have been party to in my four short years here.

Miss Martel: May I ask why you would consider it inappropriate, when a government task force made up of equal representation of labour representatives, employer representatives and the medical community, who spent over \$2 million of government money to make these recommendations, found that entirely appropriate?

Hon Mr Sorbara: I can tell you that most of the 84 recommendations in Minna-Majesky are administrative in nature and have already been incorporated into the development of the board's vocational rehabilitation programs. Some are statutory and are being addressed here and some have been rejected, including the recommendation to change the name.

What I am trying to tell you is that it would be unfair to represent to this committee that the work of the Minna-Majesky task force has simply not been heeded by government or by the board. It just would not accurately reflect the realities of what has taken place since the report was completed and this bill is considered this day in this committee.

Miss Martel: I have one further question on that, since I do not feel it is right to characterize that anything has been done with regard to

Minna-Majesky. Having read through it and having had both Bernie Young from the Steelworkers, who is a part of that task force, follow the committee, and having Jack Corrigan make representations, I request that your ministry go through the 84 recommendations as outlined in Minna-Majesky and then through the rehabilitation section, even as it presently stands at the board, and correlate both so that members of this committee can see exactly how those 84 recommendations fit into the rehab package.

I would think that once members saw what the 84 recommendations are, because I believe most members have not seen them, and see what in fact has been offered, they will find that Minna-Majesky has effectively been shelved and nothing from that report is found in these amendments.

Mr Wildman: I have a question with regard to the amendment to section 45a.

The Chairman: May I just caution members to encourage them to talk about more general things than specific amendments, because in clause-by-clause we will get to that.

Mr Wildman: I did not want to debate it. I just wanted to find out what exactly the minister understands the new wording to mean and what effect he hopes or intends it to have, if that is acceptable.

The Chairman: Yes. What section?

Mr Wildman: Section 45a. If you look at 45a and the new amendment which is shown in the black arrows in the reprinted bill, it says in subsection 45a(2), "...the amount of compensation payable to a worker for future loss of earnings arising from an injury is equal to 90 per cent of the difference between," and then, in clause (b),

"(b) the net average earnings that a worker is likely to be able to earn after the injury in suitable and available employment,

"for such period, up to..." and so on.

What does "suitable and available" mean?

1650

Hon Mr Sorbara: I think there is a good deal of discussion that is going to go on in this committee, and has actually been going on for many months in public hearings, as to what "suitable and available" means. I think we have to be concerned about that. It is an important issue. This will set the framework within which the dual award system, as contemplated in this bill, will operate.

There was some concern expressed during the public hearings, and in fact before and subsequent to the public hearings, as to what would be in the board's corporate mind as it made regulations fleshing out suitable and available employment. What we have done in response to that, on page 19 of the Queen's Printer's copy of the amended bill, is to tell the board some of the things it ought to have in its mind at that time. That is in subsection 1b. There are four things there. Then the issue will be whether or not the regulations expanding on suitable and available employment will comply with these statutory preconditions.



Interjection.

Hon Mr Sorbara: There is another thing, if I might just finish. There is another change in clause 45a(2)(b), and that is, the words have been changed from "the net average amount that the board considers that the worker is able to earn," to "that the worker is likely to be able to earn." Is that a substantive change? For a lawyer, it is. It is a slight shift from the concept of it in the board's view to a more objective context.

I recall that in Bill 101, which brought in the Workers' Compensation Appeals Tribunal, an "and" was changed to an "or" inadvertently, and it has had a fairly dramatic impact on some decisions that have been made at the corporate board and at the tribunal. What we are trying to get here is the sense that we want decisions to be made that objectively reflect unique realities of individual workers with individual circumstances and individual needs.

Mr Wildman: In regard to the section that the minister has just referred to, the new amendment on page 19 sets out criteria by which the board is to judge it, as the minister has indicated. Clause (a) is "fitness of the worker to perform the work." That makes sense, but again I guess that is judged by the board. Clause (b) is "the health and safety consequences of the worker in working in the environment" and so on, again judged by the board.

Clauses (c) and (d)—"the existence and location of potential employment opportunities for a worker in the labour market in which the worker is expected to be employed" and "the likelihood of a worker's securing employment"—I think are significant beyond those other two. When this committee was in Timmins, we had the infamous example of the board currently deciding that a custodian might be capable or would be capable of being an air traffic controller.

Mr Dietsch: Mr Chairman, with all due respect, I wonder if I might, on a point of order—

Mr Wildman: I do not think anything is out of order.

Mr Dietsch: Listen to my point and then you will hear what I have to say. I think we are really centring in on a clause-by-clause sort of area. I appreciate where the member is coming from in terms of concerns over certain areas, but I wonder if this is not a discussion that might be more appropriately done when we get into the specific areas we are going through.

Mr Wildman: Mr Chairman, on the point of order: I am not in any way trying to debate this clause. What I am trying to find out is what the minister's purpose is in introducing this amendment. I am talking about an amendment that the minister has tabled with us today and that he has introduced. I want to specifically ask him what effect he believes this to have, which will then, I hope, help me as a member of the committee to determine how I will vote on this clause.

The Chairman: I think, although it is not really a point of order, that it is a valid point of view.

I think we are getting very specific on clause-by-clause here and I would just caution members that that is not what we are here for. We want to start at the beginning of the bill and work through it on clause-by-clause. So I would encourage you to make your question or statement as general as

possible, keeping in mind, as Yogi Berra once said, that you can observe a lot just by watching.

Mr Wildman: He also said, "It ain't over till it's over."

Hon Mr Sorbara: Strike three. Next batter.

Mr Wildman: I wanted to ask specifically about this situation in Timmins where this person was told that the board felt he could become an air traffic controller; therefore, if he was an air traffic controller and earned this amount, he was not entitled to the compensation benefits.

Hon Mr Sorbara: To what benefits?

Miss Martel: The pension supplement.

Mr Wildman: The pension supplement. Is it the purpose of this amendment to ensure that this kind of thing does not happen any more? That is essentially what I am asking. Is it to say, "Okay, sure there is a position available for an air traffic controller in Timmins, and this person lives in Timmins, but you are not going to be saying to the custodian, 'You can be an air traffic controller'?"

The Chairman: Perhaps the minister would have a brief response.

Hon Mr Sorbara: Yes. I think I understand the vice-chairman's question and, in deference to the member for St Catharines-Brock (Mr Dietsch), I am not going to specifically answer on that subsection. I just want to say this to the vice-chairman: I invite him to point to the provisions in the current act as it stands now which qualify, frame, direct, guide or constrain the board from making those kinds of wacko decisions. Nothing.

There is nothing in here. There is nothing in here that says anything about it. It says the board can give supplements to some people for a little while until they find work, and the supplements will be the difference between what they could make in suitable, available employment and what they were earning before.

Mr Wildman: Right.

Hon Mr Sorbara: There is nothing to give any sense of what that means. We are not talking here about supplements. We are talking about the—

Mr Wildman: Economic loss.

Hon Mr Sorbara: We are talking about economic loss. We are trying to create a framework in which wacko decisions will not be made. So all of these provisions are directed towards that end and, what is also important, those decisions—because there is a lot of money at stake; let us face it—will be subject to appeal at the tribunal.

I do not think you are a lawyer, but—

Mr Wildman: No, I am not.

Hon Mr Sorbara: You are one of the lucky ones. As a lawyer, I know

that the real life to these provisions, the direction, what they mean, will arise from a series of leading cases that are ultimately heard at the tribunal.

Mr Wildman: I understand what you are saying. It is just my concern, and the reason I asked the question was that I do not think there is anything in the new bill that prevents what the minister referred to as wacko decisions either. That is what I was searching for in the amendments.

Perhaps we need an amendment to state that there will be no more wacko decisions by the board, or perhaps, more important in order to prevent wacko decisions, if you are going to leave this much discretion to the board, you should get the wackos out of the board.

Mrs Sullivan: Really, my remarks were going to follow on the point of order raised by Mr Dietsch. I think these amendments are substantial and without the third party being here as we had agreed, we are getting into pretty much the detail of the legislation. I wondered if it would be appropriate to adjourn for today and then return and really get into this stuff next time around.

The Chairman: Thank you. Before we adjourn, the clerk has talked to Mrs Marland. By the way, she was not here this afternoon because she was speaking in the House, so you should not fault her.

Mr Dietsch: And the other member?

The Chairman: I do not know where the other member is.

Mrs Sullivan: He does not know either.

The Chairman: Mrs Marland has indicated that on Monday we should proceed with the clause-by-clause even if she is not here. I am always reluctant to do that, but on the other hand, we cannot hold things up for ever.

We will encourage the third party to send a representative to the committee on Monday and proceed accordingly. I hope the committee will allow Mrs Marland to respond on Monday afternoon when she comes.

All right? Thank you very much. Is the minister going to be here Monday?

Hon Mr Sorbara: The minister or his trusted parliamentary assistant will be here. People will be here.

The committee adjourned at 1701.





CA20N  
XC13  
-S78

R-3

STANDING COMMITTEE ON RESOURCES DEVELOPMENT  
WORKERS' COMPENSATION AMENDMENT ACT  
WEDNESDAY, 7 JUNE 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Cooke, David R. (Kitchener L) for Mrs Stoner

Sullivan, Barbara (Halton Centre L) for Mr Lipsett

Clerk: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

Spakowski, Mark, Legislative Counsel

Witnesses:

From the Ministry of Labour:

Sorbara, Hon. Gregory S., Minister of Labour (York Centre L)

Sullivan, Barbara (Mrs.), Parliamentary Assistant to the Minister of Labour  
(Halton Centre L)



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, 7 June 1989

The committee met at 1537 in committee room 1.

ORGANIZATION

The Chairman: The standing committee on resources development will come to order. Members have been distributed an agenda that includes dealing with the committee budget and also then moving to clause-by-clause on Bill 162.

Members have in front of them, I believe, a copy of the proposed budget, which if this committee approves will be taken to the Board of Internal Economy. The budget allows for 40 meetings; in other words, a total of 10 weeks. The thinking behind that was that we could be sitting five weeks between whenever the House adjourns this summer and when it reconvenes in the fall, and possibly another five weeks prior to 1 April 1990, in the spring.

Mr Dietsch: I didn't think we would—

The Chairman: That is possible, but if we do adjourn, we want to have a budget there to deal with anything the Legislature might ask us to do. It is a couple of weeks less of travel than we had last year, but the budget is up. It is \$190,000, as you see it before you. Last year, the budget was a little over \$160,000 and it has increased for a number of reasons.

The per diems have gone up because of the amendments to the Legislative Assembly Act, if that is the right name for it. Anyway, the per diems have increased some. Some others are up. Our advertising is up. Xeroxing: We ran short last year so that is up. The meeting room rental is up. As important as anything, coffee, the cost of catering is up.

Interjection.

The Chairman: It is hard to believe. The long distance calls are up, as is the transportation of goods. That tends to be couriering.

Mr Wildman: What is the sound equipment rental, near the bottom line?

The Chairman: That is when we go into a hotel and have to hire the microphone system for the committee. We have had problems with that in the past, as you may recall, where we had to pass the mike around to everyone. It was a bit awkward at some of the hearings.

That is the proposed budget, and the credit should go to Lynn Mellor for preparing it, if you decide to pass it. If you do not pass it, I will take the blame. How is that?

Clerk of the Committee: I like that.

The Chairman: Are there any comments or questions on the budget?

Miss Martel: Yes. I am looking at airfares under the "Travel-Transportation" section, "Projected airfare requirements based on four

weeks of travel." I would ask how you arrived at that, because I am looking at some of the legislation this committee may in fact be dealing with. I do not know if you have any indication yet on which of those there may be hearings or hearings outside of here, but I wonder how you came to that four-week conclusion.

The Chairman: Just by the speculation that—

Miss Martel: I do not mean to put you on the spot.

The Chairman: No. Just instinct.

Miss Martel: Okay. Maybe I should make a clarification as to why I am a little concerned about the four weeks. I do not know what will happen to Bill 208 or if it will in fact end up in this committee. I think, though, that there would be some great push for public hearings on that bill as well.

The Chairman: On Bill 208?

Miss Martel: Yes.

The Chairman: Where are you, by the way?

Miss Martel: The first page, the "Travel-Transportation" section.

The Chairman: Oh yes; four weeks of travel. Okay.

Miss Martel: My only concern is that if that bill comes to this committee, I do not know if four weeks of travel will be enough. I am wondering if you should readjust that now or if there is anyone who can indicate whether or not it may come here and whether we should look seriously at making that adjustment now, so we do not get caught.

Mr Wiseman: My question is about the same, because I am getting a lot of letters on Bill 208. If it comes here, I think we will have to travel just as much as we did on on Bill 162.

The Chairman: Mind you, we could handle travelling for that one bill with this budget. If we got another major bill to travel with, say, next spring, then we would probably exceed the budget as put down here.

Mr Dietsch: Is there latitude on behalf of the committee to move funds within the budget as long as it does not overstep the bottom line?

The Chairman: Good question. I will ask Lynn.

Clerk of the Committee: It is usually done within finance unless it is to do with advertising or something along that line. Then the Board of Internal Economy has to approve the move.

Mr Dietsch: The other question is in relation to the approvals of funding. For example, my colleagues have raised the issue of additional travel that could or could not be required. Can that be submitted to the internal economy for additional approval?

The Chairman: Yes.

Mr Dietsch: So it is not necessarily something that has to go in right now. We do not even know in fact whether we are going to adjourn this summer.

Mr Wiseman: Is it not fair to say, though, that in the past when we went to ask the Board of Internal Economy for additional moneys, it was quite hard to get it after it had set the budget?

The Chairman: No, not if the committee has been assigned a task. Also, I would point out that the budget is up from \$160,000 to \$190,000, which is almost a 20 per cent increase, so we are nervous of making it too high and bumping it over the \$200,000 level.

Mr Wildman: I was going to raise the issue Mr Dietsch raised. Can we go back for a supplementary if we need to?

The Chairman: Yes.

Mr Wildman: At the risk of being accused of supporting your building of an empire, I will make the motion.

The Chairman: Mr Wildman moves that the budget in the amount of \$190,720 be approved and that the chairman be authorized to present the budget to the Board of Internal Economy.

Mr Dietsch: Is the empire building part of your resolution?

The Chairman: If I were empire building, I would have tried to make it a bigger budget, as suggested by some members of the committee.

You have heard the motion by Mr Wildman. Any other comments?

All those in favour? Opposed?

Motion agreed to.

The Chairman: There is one other point before we get into the discussion by members. There are a number of members, including the chair, who would be happy if the committee did not sit tomorrow. However, the committee can sit. There is no reason it cannot sit. Mr Wildman will be here, so we can sit.

Mr Wildman: I will be here.

The Chairman: That is what I said.

There are a number of members who have asked if the committee would consider not sitting tomorrow. I will leave that up to the committee. What does the committee want to do? Does the minister or his parliamentary assistant have anything to say on that, to be here or not here?

Hon Mr Sorbara: I understand why a number of members of the committee are unable to be here and I do not have any problem with that in particular. I will just defer to the whip.

Mr Dietsch: The difficulty of not sitting tomorrow causes me some concern in relation to last week when the committee was supposed to sit and we did not get any business done. On Monday, we did not get any business done by



the committee and I am concerned about the workload of the committee. I understand the reason for tomorrow's request was for the attendance of a funeral that is going to be held in the morning. I think members will be here for question period and I would prefer to sit tomorrow so that we can carry on with the business.

The Chairman: The funeral was not the reason my members were not available.

Mr Dietsch: That is what I had understood.

Mr Wiseman: I go along with the request for tomorrow.

The Chairman: Does anybody else want to speak on that? We can sit tomorrow so it is not—

Mr Dietsch: I would prefer that we sit tomorrow.

The Chairman: Is it agreed that we will sit tomorrow? I do not think we need to vote on it. All right. There is no motion for it anyway. It is agreed that we will sit tomorrow and somebody will be here representing the ministry.

# WORKERS' COMPENSATION AMENDMENT ACT, 1989 (continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act

The Chairman: We had agreed last time we met that Mrs Marland would have an opportunity to make some opening remarks or respond to the minister's opening remarks as she saw fit, after which we will move to begin the clause-by-clause debate.

Mrs Marland: Just at the outset, I want to give an outline of how we in the Progressive Conservative caucus see Bill 162 and then I want to respond to the amendments.

First of all, it is important to look at the problem. The problem is the frequency and severity of workplace accidents.

In 1987, there were over 300 occupational fatalities in Ontario; that is, deaths arising out of occupational illnesses and injuries. There were 209,255 allowed lost-time claims at the Workers' Compensation Board in 1987, yet only 13,496 injured workers were referred for vocational rehabilitation in all of 1987.

1550

Of well over 100,000 injured workers on permanent pensions, approximately 40 per cent remain unemployed. In Ontario, the number of disabling injuries has risen by 61 per cent in the past 10 years. A large number of workers are killed each year on the job site and an even larger number of workers must live with the pain of a workplace injury for the rest of their lives. A worker asks only to be allowed to become gainfully employed and financially independent as he or she was before his or her accident.

We do not see Bill 162 as the solution. Workers gave up the right to sue employers in 1915 in return for more immediate compensation. The system has

not been radically altered since its inception, but it is long overdue. Any bill that proposes patchwork amendments should be scrapped in its entirety.

We think Bill 162 is a Band-Aid solution to two very serious problems. Efforts must be made to reduce the frequency and severity of workplace accidents. As well, and perhaps more important, we must rehabilitate those workers who are injured on the job site. Employers, workers and society will benefit from this.

Mr Sorbara's proposed amendments to Bill 162 demonstrate that the minister does not have a handle on workers' compensation in Ontario. When he originally introduced Bill 162 in the Legislature on 20 June 1988, Mr Sorbara stated, "The issue has been studied thoroughly."

Hon Mr Sorbara: I am listening very carefully.

Mrs Marland: However, it took public hearings for the minister to gain a true understanding of the problem.

Amendments to such an important piece of legislation at such a late stage in the game show just how committed the minister is to effectively overhauling the system.

Bill 162 says it is okay to deem workers. Mr Sorbara is effectively telling workers they will be able to do things they never thought they could do. Bill 162 makes no guarantee for rehabilitation of injured workers, only an assessment. What is the good of telling workers what is wrong if no action will be taken to remedy the situation?

We feel we have the real solution.

Any reform of workers' compensation in Ontario must address the following: more effective control and enforcement of health and safety regulations in Ontario; rehabilitation programs that are comprehensive and readily available; reinstatement of injured workers as the ministry's primary goal; compensation coverage that is applicable for all Ontario workplaces.

The Progressive Conservative Party is calling for a royal commission to study all the implications of the reform of workers' compensation in Ontario.

To respond to the amendments, first of all, the noneconomic-loss award: In the amendment you are saying that the injured worker will be given an opportunity to choose between selecting a physician from a government-appointed roster of physicians or selecting a physician from a roster established by the Lieutenant Governor in Council.

Upon receipt of the assessment or after the roster physician's review where one has been requested, the WCB will use the medical assessment in conjunction with the ratings schedule and the worker's age to determine the noneconomic-loss award, but injured workers are still not allowed to choose their own qualified physicians. These physicians still remain government-appointed. I think, with respect, that we heard a great deal of input on that one point alone. Frankly, I do not see why granting the choice of their own qualified physicians is such a difficult hurdle to get over.

Form of payment: Of course, Bill 162 was unclear with respect to the determination of the amount of monthly payments where an injured worker opts for such instead of a lump sum payment. In the amendment, you are saying that

the bill will be amended to clarify that the injured worker has the choice of receiving monthly lifetime payments, such that they last until age 65. I do not understand the contradiction in terms here, because we talk about lifetime payments and then they last until the worker is 65. That is a contradiction in itself.

Anyway, they have the choice of doing that or taking the award of a lump sum. Awards equivalent to a lump sum of \$10,000 or less will be automatically paid out in a lump sum. We feel that unqualified lump sum payments are in the best interests of workers. This would allow them to plan their own financial futures and possibly receive a higher rate of return on the amount awarded to them for their injuries.

Reviews of unanticipated deterioration: The bill limited subsequent reviews of unanticipated deterioration of an injured worker's degree of impairment to a maximum of two occasions during the lifetime of a worker. Concern was expressed that this would be unfair, particularly for younger workers. In the amendment, the restriction on the number of reviews of unanticipated deterioration is deleted, and we thank you for that positive measure. We thank you for listening.

Appeals to Workers' Compensation Board noneconomic-loss decisions: Bill 162 limited reviews of noneconomic awards to a medical review to be performed by an independent medical practitioner chosen from a government-appointed roster. The bill prevented a further appeal of those decisions to the Workers' Compensation Appeals Tribunal.

In the amendment, in the event of a disagreement over the assessment on the part of the worker, the employer or the WCB, the assessment can now be referred within a period of time, to be later prescribed, to another roster physician selected by agreement of the worker and employer. If these parties are unable to agree, then a roster physician selected by the WCB will review the matter. Any disagreement over the amount of the noneconomic award can now be appealed to WCAT for final resolution.

We feel that the workload of WCAT could and probably would increase significantly. There is no guarantee that the worker or employer will win his or her appeal to WCAT. This amendment appears to spell out justice for injured workers and employers. It is, in effect, simply a hollow promise.

Economic loss in the industrial disease claim: The timing of the initial determination of an earnings-loss award in cases of industrial disease poses problems as the bill is currently drafted. In the amendment it says the initial wage-loss award for an industrial disease is to be determined within one year of the WCB's acceptance of an industrial disease claim. We feel that special attention should be paid to some diseases, particularly lung disorders, which surface well into the future. We are very concerned about the time factor there.

Duration of final awards: Bill 162 could be interpreted to mean that the final earnings-loss award might be terminated by the WCB before an injured worker reaches age 65. In the amendment, the bill now clarifies the government's intent that the final earnings-loss award will continue until the workers reach age 65. Our response to that is that no special favour is being given to injured workers through this amendment. The ministry is merely cleaning up the sloppy wording of the bill as originally crafted.

1600

Hon Mr Sorbara: Tsk, tsk.

Mrs Marland: It is fortunate that we are not in the Amethyst Room.

Meaning of "suitable and available employment": This is really significant. The bill stated that one of the factors that the WCB is to take into account when determining a prospective earnings loss is the availability of suitable employment. The criteria for identifying suitable and available employment are to be set out in regulations, which need cabinet approval.

In the amendment, Bill 162 will be modified to set out specific factors which the WCB must take into account in developing regulations for determining suitable and available employment for inclusion in the regulations. We feel that this amendment simply buys the minister some time. It does not rectify the problem of deeming; it only defers the issue. Rather than have the matter dealt with through wording in the bill itself, we must await regulations. What are those specific factors upon which the regulations will operate?

Probably the most heart-wrenching examples that were brought to us during our months on the road throughout these hearings were around that particular section of the bill. Everything related to deeming and the interpretation of "suitable and available." Our English language is not the greatest when you start depending on words, and to simply say that it will be addressed in regulations does not give this committee the mandate that it has. The mandate of this committee was to look at Bill 162. Now if we are looking at Bill 162 and the regulations are off in the future or off in the air and we do not have any control over them, then you are taking that away from this committee, in our opinion.

Older worker minimum earnings-loss award: This has been interpreted as giving the WCB sufficient discretion to deprive older workers of proper wage-loss awards. In the amendment, Bill 162 will now clarify the government's intent that older workers who are injured in the future will have an option to choose to be compensated under the new wage-loss system or to take an earnings-loss award equivalent to the old age security pension. Again, this amendment promises nothing new. Workers should be given the choice to opt out for the new system if they feel it to be better and in their favour.

Eligibility for vocational rehabilitation: Bill 162 was open to interpretation that it limits the new vocational rehabilitation provisions to workers on temporary compensation. In the amendment, any injured worker who is receiving or has received temporary benefits will be eligible for vocational rehabilitation, but in fact rehabilitation should have been promised to those workers who are receiving or have received temporary benefits in the original bill. This is an oversight of the ministry which is only now being addressed.

Timely provision of vocational rehabilitation: Bill 162 requires the WCB to contact an injured worker in a timely manner after an accident to determine if any vocational rehabilitation services are required. It also stipulates that where an injured worker does not return to work, the WCB must offer the worker a vocational rehabilitation assessment within six months. However, Bill 162 does not impose any obligation on the WCB to make a determination of the need for vocational rehabilitation in a timely manner.

In the amendment, Bill 162 will now require the WCB to make a determination of the need for a vocational rehabilitation program within 30



days of receiving a vocational rehabilitation assessment. It is only right that this amendment be included in the bill. Rehabilitation is one of the keys to an effective workers' compensation system.

We are happy if we can believe that now is the time that the minister has recognized this. I can only speak for myself. I probably did not realize the extent of how important this timing was until we were on the road and we had all the input. I guess I am in the position where I am surprised that the people in your ministry, who work with this kind of thing all the time as I do not, did not have it in the original bill. I would have thought they would have known.

Definition of vocational rehabilitation terms: Bill 162 sets out the types of initiatives that may be included in a vocational rehabilitation program. However, other related terms have not been defined. In the amendment the definitions of the terms "vocational rehabilitation services" and "vocational rehabilitation assessment" will now be included in the bill.

Why were these terms, which are of crucial importance, not included in the language of the bill in the first place? I guess that again points back to the fact that there is no question that the bill was sloppily drafted. In as important a bill as this should have been, needed to remedy a major problem, it is amazing that these gaps were there.

Re-employment provisions: Bill 162 exempts from the new re-employment obligation the construction industry and businesses that employ 20 or fewer workers. The construction industry with its irregular work patterns and hiring hall system presents a very significant problem for the practical implementation of a workable reinstatement scheme.

An amendment to provide for the obligation to re-employ will be extended by regulation to the construction industry. The regulation is to be developed in consultation with representatives of employers and employees in the construction sector. We feel that this is a half-measure by the minister. Again, we see another promise to address another very serious problem at some time in the future, again through uncertain regulations. It is not something that we are part of. That is what we are asking.

Work modification: Although the vocational rehabilitation provisions of Bill 162 make reference to workplace modifications, the re-employment provisions do not. In the amendment, Bill 162 will now place an obligation upon the employer, subject to an undue hardship test, to modify the workplace or the work in order to accommodate an injured worker. The employer will also be required to file any such modification plan with the WCB.

What is the hardship test and who has input into its formulation? That is the question we feel needs to be answered. I think, in fairness, that is a question that needs to be answered for both the employer and the employee.

In the section about workers returning to work, Bill 162 is unclear as to who determines when workers are able to return to work. The bill is also unclear about what happens to an employer's obligation to reinstate injured workers in their former jobs when they take alternative employment prior to being able to carry out their former duties.

In the amendment, Bill 162 will now clarify that the WCB will have the responsibility for determining when the worker is able to return to work and notifying the injured worker's employer to that effect. As this is a WCB

decision, injured workers who disagree with the WCB about their ability to return to work may appeal this decision to WCAT. Also, Bill 162 will clarify that the workers' acceptance of alternative jobs does not end the employer's obligation to reinstate workers in their former jobs or comparable jobs, if they are subsequently unable to do either, within two years of incurring the injury.

We just see this amendment as meaning more appeals to WCAT and more uncertainty. The irony here, I think, is the fact that workers are trying to get back to work and probably by the time they go through WCAT, waiting for their appeal to WCAT—if we carry on as we have been in the last few years because of the workload at WCAT—workers are probably going to be ready for retirement by the time they get this sorted out.

#### 1610

Seniority rights: Bill 162 is open to the interpretation that the re-employment provisions may interfere with seniority rights. In the amendment, Bill 162 will clarify that its provisions will not adversely affect negotiated seniority provisions. This is important and necessary in a union environment and should have been made clearer to begin with. I think what also begs the question here, Minister, is what happens to the people who are not in negotiated agreements. Obviously, I do not know. You will know what percentage of workers in Ontario are not in negotiated agreements. How will you address the seniority provisions for them?

Under the penalties, it was intended that the WCB would have the authority to use the moneys collected as a result of employer penalties for failure to honour these obligations to financially assist the injured worker where he or she has consequently suffered an earnings loss. Bill 162 lacks clarity on this point.

In the amendment, however, it will clarify that the WCB does have the authority to use the employer penalties to compensate an injured worker where wage loss is suffered because an employer violated this section. This modification will also increase the penalty from 90 per cent to 100 per cent of the worker's previous year's net average earnings. This we see as a positive measure.

Interjection.

Mrs Marland: I said it was a positive measure.

Hon Mr Sorbara: I am startled.

Mrs Marland: WCAT appeals: Bill 162 states that WCB decisions regarding re-employment provisions shall be final with no appeal to WCAT. In the amendment, Bill 162 will be amended to allow for appeal of WCB decisions to WCAT. There is no guarantee of justice through this amendment. It is only a guarantee of more litigation. That is why the whole system needs review.

Maintenance of benefits and calculation of wages and salaries: The Workers' Compensation Act currently requires that the cost of benefits be included in the calculation of wages and salaries when determining an injured worker's compensation entitlement. Bill 162 requires that an employer maintain life insurance, health care and pension benefits for up to one year from the date of the injury. To avoid double payment by the employer, the bill removes the cost of any employer contribution from inclusion in the calculation of

wages and salaries for the purposes of calculating compensation entitlement. However, at the end of the year, if the injured worker is still off work, the cost should be included in the compensation calculation. Bill 162 does not say that.

In the amendment, the language of Bill 162 will be corrected to limit the exclusion of the benefit costs from the calculation of earnings, just for the one year, so that it equals the period of time the employer is obliged to otherwise maintain benefit protection. Obviously there are more oversights and more corrections. I think, as we go through this, you will see why our conclusion is what it is.

**Multiemployer benefit plans:** Bill 162 does not take into account the peculiarities of multiemployer benefit plans that exist in some industries, particularly construction. While these vary in detail, they generally provide for an hourly contribution to the plan with the trustees being responsible for the actual provision of benefits. Many already make provision for the payment of or maintenance of benefits during absences from work, including those caused by a workplace injury. In the amendment, Bill 162 will place the benefit maintenance obligation upon the trustees of the multiemployer plans rather than upon the individual employer. I am happy to say we see that as a positive measure.

**Earning ceiling coverage:** The phase-in of 175 per cent of the provincial average industrial wage as the new earnings ceiling includes initial and interim earnings ceiling levels, which assumed the passage of Bill 162 in 1988. The initial and midpoint ceilings of \$35,000 and \$40,000 respectively are now outdated. They do not take into account changes in the current earning ceilings and increases in the average industrial wage. In the amendment, Bill 162 will revise upward the initial and interim, 1 January 1990, earning ceilings at \$37,400 and the midpoint, 1 January 1991, ceiling will be raised to \$42,000.

We see this as only right. The minister has delayed reform of the workers' compensation system by presenting a poorly crafted bill. Workers should not be made to suffer financially. I think that goes without saying.

**Transition provisions:** Bill 162 makes provision for supplementary benefits that may be payable to those workers who are compensated under the current system and whose pensions are significantly lower than the loss of earnings resulting from their injury. The bill maintains a threshold test for eligibility for this proposed supplementary benefit.

In the amendment, the threshold test will be removed as an eligibility requirement for the supplementary benefit. Eligibility will be extended to all injured workers whose pensions are less than their earnings losses. The maximum amount of a supplementary benefit will be equivalent to the full monthly old age security pension. As well, workers will be eligible for vocational rehabilitation and a full supplementary benefit while a worker participates in a WCB-approved vocational rehabilitation program.

This amendment will aid an additional 4,900 injured workers. Again, we see this as a positive measure. Of course, all these positive measures in these amendments beg the question about why they were not there in the first place. Had we not gone to public hearings, where would we be today with this bill? Where would we have any changes if we had not had the input and the demands made by the injured workers around the province?



I am coming down to the last three items—miscellaneous technical amendments.

Court costs: A recent court decision has ruled that costs should not be awarded where an agency has its own legal counsel handling the case. This would preclude the WCB from seeking costs when using its own counsel.

In the amendment, Bill 162 will enable the WCB to have a similar authority to that of other government agencies to seek costs in proceedings in which WCB lawyers are involved. We see this as more money that ends up being wasted through administration and not in programs for those in need of assistance.

Support payments: Bill 162 did not sufficiently include the provisions of the Wages Act. In the amendment, it now includes an amendment to incorporate the garnishment provision of the Wages Act so that these will apply in cases where a court order has been issued to garnish workers' compensation payments further to support agreements.

This is another oversight which gets corrected after the fact. Nevertheless, it is now corrected. Thank goodness we have gone through the process.

Spousal vocational rehabilitation: Bill 162 provides for vocational rehabilitation to the surviving spouse of an injured worker. However, the proposed timeliness provisions are technically incorrect. In the amendment, Bill 162 will give a surviving spouse the right to request a vocational rehabilitation assessment and such other vocational rehabilitation services as appropriate, so long as the spouse does so within a year of the death of the injured worker. This is a right. It is not a special favour being granted by the ministry.

Regulatory authority: Additional regulatory powers are necessary in order to give better definition to certain provisions of the bill. In the amendment, the regulation-making authority will have the power to establish criteria for determining the essential duties of an injured worker's pre-injury job, criteria for determining suitable alternative employment when the injured worker is unable to perform his or her duties, and the re-employment requirements in the construction industry.

## 1620

To sum up, all of those comments only go to reconfirm and emphasize the necessity for Bill 162 to be scrapped. I know the word "scrapped" has become the local colloquial word used around this province by injured workers. The irony is that, even with all the amendments you now have brought forward, we still feel that Bill 162 is not the solution of the problems with workers' compensation that exist today in this province.

I think it is really significant that our party is saying this—

Hon Mr Sorbara: It certainly is.

Mrs Marland: —because we are saying it on behalf of the employer and the employee. You will notice that every time employer groups came before this committee on the road they said—and I have kept all kinds, reams and reams, of quotations where they have said this at all the hearings I have attended—"We are presuming this is not going to cost us any more, and therefore we support it."



That is the bottom line of what they have said around this province about this bill. It is on that basis that industry and consequently commerce around the province think that Bill 162 is okay. They have actually been quite silent on your amendments, I notice. But the fact of the matter is that I think you and I both know that this Bill 162 is not going to cost the employer less and it is not going to remedy the \$28-billion projection that we have for the unfunded liability of workers' compensation by whatever—

### Interjections.

Mrs. Marland: I said "the projection." I know what it is this year, but the figures we have been given as to what that fund will be by the year 2000 are horrific. I know what it is this year. I also know that we were given tables of projections for 1995 and the year 2000. This bill is not the solution.

You should really be smiling, because you can sit there and say: "Well, of course, we've only had responsibility, indirectly, for workers' compensation for the last four years. Your party had responsibility for it for 42 years." I am sitting here as a member, serving this government for only four years, and I am not about to either defend or apologize for anything our government did in terms of workers' compensation in this province. But I want to tell you that any government in Ontario today can recognize the problem, because the problem is blatant. The problem is blatant for the employer who can hardly afford the payments. The problem is blatant for that injured worker who wants only to have some chance to be independent and self-supporting.

Injured workers do not want to be pensioned off for the rest of their lives. That is the last thing they want. They do not want to become couch potatoes at best or in pain the rest of their lives at worst. Injured workers want it to be possible to be rehabilitated. Sometimes rehabilitation helps with pain. That is a basic, commonsense statement, but I am sure you understand that.

If people can be happily re-employed through rehabilitation and take their minds, to a degree, off whatever their injury has been, even if it is only to the smallest degree, it is better than letting an injured worker suffer. Since this bill is not the solution to any of those important tangibles for injured workers, therefore it is not the solution for their employers either.

I think that is what you have to consider. You should really be in a position where you can say: "Well, we have put this bill out. We have certainly listened." I am sure you are going to tell me that you have listened, because you have got these amendments as a result of listening to the public input. That is what your answer is going to be. But you are in a perfect position because you can say, "We didn't cause this mess." Maybe you are right. Maybe a royal commission is what is needed.

I respectfully ask that if you really want to get to the bottom of the problem for employers in terms of cost and for injured workers in terms of how they can be rehabilitated and compensated fairly and make the whole thing work, if I were you I would be happy to hand it over to a royal commission and when that report comes back, draft a piece of legislation that will stop the problem that exists today in Ontario.

The Chairman: Thank you, Mrs Marland. Did you wish the minister to respond briefly to you? We do not want to have it going back and forth for ever.

Mrs Marland: No, I will not go back and forth. I am at the minister's pleasure. If he is going to say he would happily agree to a royal commission, it will not take very long.

Hon Mr Sorbara: I have a very brief response to Mrs Marland's comments. I listened to them attentively, I think. I enjoyed them and I enjoyed hearing her say that certain of the amendments were salutary and that they supported them. I hope that means that during the clause-by-clause consideration of the bill, notwithstanding their concern with some of the sections, they are going to be supporting the process and ensuring that a good, active, vibrant debate occurs but that the bill will go through the process it is now about to go through in this committee as expeditiously as possible.

I want to comment on the underlying theme of Mrs Marland's suggestions that we ought to postpone our legislative consideration of the workers' compensation system and undertake a royal commission process. Typically those last for three, four or five years, sometimes longer, and often legislation is a couple of years after that in the formulation and consideration. What you are really suggesting is to postpone the issues confronting the workers' compensation system for about 10 years. Upon assuming my responsibilities as Minister of Labour, I had to consider recommending that option in terms of the worker compensation system and I rejected it because it is a long process that often does not produce effective results.

The other thing to be said about a royal commission is this: I do not have anything against royal commissions in principle, but if you wanted to have a royal commission in this province, maybe you should be looking at finding ways of ensuring that a broader constituency of individuals with disabilities receives the general level of assistance, compensation, care and concern that workers do under the worker compensation system. That is the real political issue confronting us as a province in the future, not so much that we have to fundamentally re-examine the underpinnings of the worker compensation system.

If you do that, you would have quite a few employers saying: "Privatize it. Give workers back the right to sue." The system we have, with all of its weaknesses and frailties, has served the workers of this province relatively well over the past 75 years or so. So I say yes, let's look at some fundamental issues within the context of a royal commission, but let's choose our issues very carefully.

You should know that in Ontario the average claim, when you take all of the claims handled by the worker compensation system, is in the neighbourhood of some \$6,500. If you look across this country and ask yourself what the average claim for the next-highest province is, and I know you are interested in the cost to employers, the average claim in the next-highest province, Quebec, is just over \$3,000. Those are pretty stark figures when you look at them. That is not to say that we are doing all we should be doing, but we are certainly paying out claims very substantially higher than any other province in Canada.

1630

At the same time, we have to ask ourselves, I guess again in a fundamental way, one of these days, when we are going to provide that level and quality of assistance to people with disabilities who have not been injured in the workplace and do not have access to the workers' compensation system.

I think those are questions for the future. Those are questions that whoever governs in this province is going to have to look at down the road. But I certainly disagree with the fundamental proposition that it is time to have a royal commission on the workers' compensation system.

Having rejected that alternative, I am confronted with a system now in existence for compensating people with permanent partial disabilities that bases compensation on the nature and extent of the accident and the injury. I say that this is fundamentally wrong and that the most effective and appropriate way of compensating people with permanent partial disabilities is to compensate them based on their loss in earnings capacity.

Bill 162, at its base, does simply that. It goes from a system that compensates people based on the nature and quality of the accident and creates a system where people are compensated based on the reduction in their ability to earn. I think that is fair and just. I hope the committee understands, as it deals with this bill clause by clause, that this is fundamentally what this bill is all about.

I enjoyed Mrs Marland's comments and I look forward to these clause-by-clause deliberations.

**Mrs Marland:** I just want to ask the minister two fast questions. One is, will this bill cost the employers any more than the present compensation? In other words, the fact is that the employers are saying that this bill is okay, believing that it will not cost them any more. Can you tell the employers that it will not cost them any more? That is one question.

The second one is, I hear what you are saying about the royal commission and the time factor. If we were to accept that, the question is, why then would you not have used the recommendations and all the research and work that went into the Minna-Majesky report?

**Hon Mr Sorbara:** Those are, I think, two important questions. In answer to the first, I would say that all of the analysis I have seen indicates that the system proposed in Bill 162 and those other aspects of Bill 162, including rehabilitation and re-employment, are cost-neutral as compared to the present system that we have. You have heard me say that before.

The simple answer is that the changes to the Workers' Compensation Act in Bill 162, as it will be amended, one hopes, by this committee, will not have an upward or a downward impact on assessment rates. There are other factors that will affect those assessment rates, including, obviously, rates of accidents, costs of medical coverage and a variety of other things, but these amendments are presented with a financial analysis that is cost-neutral.

The answer to your second question regarding the Minna-Majesky task force report is the same answer that I have given before in this committee, and that is this: The report represents a watershed in the questions relating to rehabilitation in this province. There had been a lot of public discussion on vocational rehabilitation prior to the report. The task force members did a thorough job. They wrote a very good report and it has led already to a number of changes in procedure and administration at the Workers' Compensation Board, I am told. It also is the basis upon which we bring forward amendments in Bill 162 to the system of vocational rehabilitation.

I acknowledge that while the Minna-Majesky task force report recommended that injured workers have a statutory right to vocational rehabilitation, Bill



162 does not incorporate that recommendation. In this committee on previous occasions, I have explained why that is the case and I would not want to take up too much more of the committee's time by repeating those arguments at this time.

The Chairman: Is the committee read to begin the process of clause-by-clause debate?

Miss Martel: No.

The Chairman: The floor is yours, Miss Martel.

Miss Martel: I would like to raise a point of order that I am going to request of the committee at this particular time. I would think that most of the committee members who were involved in the hearings now have had the opportunity to go back and review the presentations we have received, the oral presentations during the committee hearings and also the written submissions that have come in. Since most members promised they would do that, I am sure they have now done so.

As I worked through mine, it became clear to me that there were a number of issues raised during the course of the hearings that in fact remain outstanding. They have not been clarified through the course of the public hearings, through the amendments to the amendments that were announced by the minister in January or through the amendments to the amendments to the amendments that were announced in here two weeks ago. It seems to me there are some major gaps that have yet to be filled, no matter what side of the issue we are on. These gaps have yet to be explained. I think that as a committee, we will have to address those first before we start to deal with the amendments.

To give you an example, the first area I think was not well covered during the course of the hearings, and which has not in fact changed in the amendments to the amendments to the amendments, is the particular issue that concerns the age distinctions that are inherent in this bill. Members of this committee, and three of the four Liberal members were here that day when Raj Anand was in, will remember that he specifically pointed out not only reinstatement, which I will deal with, but also his problem and the problem of the commission in terms of the age distinctions that are inherent in two sections of the bill.

As we all know, the first section is with regard to the lump sum payments, and the second section is with regard to the retirement pension and the age 65 that was used. Those people who have their Hansards here will remember that quite a lively debate and lively questioning went on that day. Because the chair had to cut off debate that day, there was some indication at the end that if we wanted to recall Mr Anand, or members from the commission given Mr Anand's present state, the committee could consider that at clause-by-clause.

The Chairman: I do not like to interrupt the member, but speaking of cutting off debate, I think the chair would appreciate a motion so that we can debate a motion. Otherwise, we are going to be getting into the dangerous ground of debating sections of the bill before we get to them. I urge the member to move a motion so we can debate the motion rather than a section of the bill.



Miss Martel: Okay. For you, Mr Chairman, I will do that.

I move that the committee direct the clerk to contact Raj Anand or the acting commissioner, inviting him or her to appear before the standing committee on resources development to further discuss their concerns with the age distinction and benefits structure and the reinstatement provisions provided in Bill 162.

The Chairman: Do you wish to speak to your motion then, Miss Martel?

Miss Martel: I started and I will continue. Members who were here that day and who have gone through Hansard will remember that there were a couple of issues raised that have not been clarified in that particular section, as I said, either through the course of the hearings or in fact through the amendments that were introduced two weeks ago. There was great concern, and in fact Mr Anand was quite clear in pointing it out, that the age calculations that were used in these two particular sections in the bill were contrary to the code. They were also contrary to public policy that this government introduced in the last number of months or since it has been in power. He also used the case of the change to legislation concerning auto insurance and the removal of discrimination based on age, sex, marital status, etc.

1640

There was a second issue that was raised, separate from that. I think it was Mr Brown's contention at that point that if it could be proved the age distinctions were actuarially sound, would it be right? I think it was Mr Brown. Let me just check. It does not matter.

In this case, it has Mr Brown raising the question that if it could be proved that the age distinction was actuarially sound, would the Ontario Human Rights Commission accept the age being used? In fact, Mr Anand outlined to the committee that day that this would not be the case, that the commission would not accept that.

Further, there was a letter that was forwarded to all members of this committee on 7 April. It was 13a, attached to exhibit 13. It again outlined the commission's position that it could not accept the age distinctions; whether or not they were actuarially sound was not the point. The use of age, either age 65 for the pension awards or the use of age 45 for the noneconomic loss, was not acceptable to the commission and would be challenged as well, in his opinion, under the Human Rights Code by the first person through this particular system.

I would suggest to the committee that this is a fairly significant issue. It has yet to be resolved. The age distinctions were not changed with the new amendments to the amendments that we saw last week. I also do not think the committee had sufficient time during the course of Mr Anand's presentation to deal adequately with it. I would like to move at this time that the committee or the clerk be directed to recall either Mr Anand—I do not know if he can come, given his present situation—or someone from the commission, with legal counsel, to deal with this matter with us.

Mr Brown: I also think it would be useful to hear at some point from the Ontario Human Rights Commission about some of the points. I believe Miss Martel is right. I was asking the question when time did not permit us to go forward. However, I do not think that precludes us going on with

clause-by-clause at this moment. I think we can go forward. The clauses she is referring to are not near the beginning of the bill, and somehow I cannot believe we are going to get to them before six o'clock.

Given that, I think we have some time to reflect on Miss Martel's motion. Perhaps Miss Martel would stand it down until some point later on when we can all consider it, seeing that we will not be on those clauses yet.

The Chairman: If it would be helpful, Mr Brown, I will reread the motion, which been put in writing.

Miss Martel moves that the standing committee on resources development direct the clerk to contact Raj Anand, inviting him to appear before the committee to further discuss his concerns with the age distinctions and benefit structure and the reinstatement provisions of Bill 162.

There is nothing in the motion by Miss Martel that precludes the committee doing as you suggest. Is that right? It would presumably just be that we deal with him, or somebody from the Ontario Human Rights Commission, before we got to that section.

Mr Dietsch: I think there would be a requirement to have the legal opinion the ministry has put forward in this area. I too agree with the point that we should be moving on through our clause-by-clause work. I do not see the advantage of putting everything off at this point until we get to that area of the bill. In a serious effort—

The Chairman: I do not mean to interrupt you. That is not in the motion.

Mr Dietsch: It is in the member's comments.

Interjection: Maybe we could ask Miss Martel.

Mr Dietsch: Maybe we could have a clarification. Is the member suggesting that we stop everything until Raj Anand—I do not even know whether Raj Anand would be the appropriate person to bring before the committee, quite frankly, based on the current position he now sits in or does not sit in, as the case may be. I do not know if we can even ask Raj Anand to come before this committee, and that is what the motion says.

The Chairman: There has been a request for clarification, Miss Martel.

1640

Miss Martel: If I may respond, I do not intend to have the proceedings held up until we are able to get Mr Anand or any representative from the Ontario Human Rights Commission here. There are a couple of people or groups I think the committee should hear from and I would like to have the committee vote on whether or not we hear from those people, so we know if in fact we are going to have some representation before we get to those particular clauses. I do not think we should hold up the committee in terms of our proceedings until we get those people, but I would like the motion dealt with today. I do not want to stand it down.

Mr Wildman: I think there was a misunderstanding. To me at least, it was clear what my colleague was proposing, and that was that we not proceed

with clause-by-clause immediately until we deal with her motion, but that once the motion was dealt with we could then proceed with clause-by-clause.

I note the letter over Mr Anand's signature, dated 7 April, to the chairman of the committee in which he states:

"I am writing to clarify briefly my reply to a question from Mike Dietsch during my presentation to your committee on March 1, 1989.

"The question concerned the age distinctions that have been built into the pension provisions in Bill 162. Mr Dietsch wondered whether the discrimination on the basis of a prohibited ground in the code, namely age, could be justified if it could be shown to be actuarially sound.

"I wanted to clarify the commission's view that the concern over age discrimination contrary to the code arises whether or not it can be shown to be actuarially justified. Indeed the government itself has acknowledged this through its amendments to the automobile insurance act (Bill 2) to prohibit distinctions being made in insurance rates based on age, sex, marital status, family status or handicap notwithstanding the actuarial evidence to support the distinctions. I also note that the commission actively supported the government's initiative in its intervention before the standing committee on the administration of justice which studied Bill 2 in 1988.

"Thus, just as the government has now required insurance companies to find a nondiscriminatory way to assess insurance premiums, the commission believes it is necessary to find a nondiscriminatory way to assess pensions under Bill 162."

I think Mr Anand at least was making very clear on behalf of the commission that the actuarial aspect is not the governing one in his view, but rather whether or not a prohibited ground under the code, that is, age, could be used. Since Mr Anand, due to other circumstances, unfortunately has indicated he is resigning from his position at the Ontario Human Rights Commission, surely it would be useful for us to get another representative from the commission to come to the committee to deal with this issue.

If it is the commission's position based on legal advice that any discrimination on the basis of age, regardless of actuarial aspects, is against the code, then that certainly will affect, I think, the way this committee deals with those particular sections. If the committee passes those sections without change, then it certainly would open it up for a challenge once the legislation is passed into law.

I support my colleague's motion that we call someone from the commission to deal with this. If they can give us a legal opinion or at least explain the legalities upon which Mr Anand based his opinion in his letter to the committee, I think that would be helpful to us.

Mrs Sullivan: I think one of the things that is clear in the remarks the member for Sudbury East made surrounding her motion that perhaps might not be clear in the motion is that the member intends to coerce or convince the committee that public hearings should be reopened. In fact, that is the intent and the sole purpose of her amendment. In my view, we have had adequate public hearings. We have already spent some time today on what is basically a clause-by-clause discussion. We do not need further public hearings as each section moves ahead. Provisions have changed in this area under subsection



45a(4). In my view, we should proceed to clause-by-clause. I will not support this motion.

1650

Mrs Marland: I guess I am a little disappointed by the parliamentary assistant's response. First of all, I am disappointed that she would choose to use the word "coerce" in terms of reflecting on the intent of another member. I think that is poor parliamentary language and I hope she would withdraw the suggestion that any member of this committee is trying to coerce any other member on this committee through a simple motion before the committee. I think that is a little unfortunate.

The question is that this is not a new point that has been raised. I would like to ask the minister why this point has not been addressed, either formally or through his members on the committee. The fact of the matter is that regardless of whose bill this is and regardless of which committee deals with this bill, the result is going to look pretty indefensible, ridiculous, or whatever other word you want to use if it ends up that any section of this bill is in conflict with the Human Rights Code. It is very simple. It is very basic.

Why would we spend any time discussing a motion that is simply asking for clarification? I would think that you, minister, would be interested in having this area clarified by your ministry. Why would you not be willing to have someone come before this committee for the benefit of all these members so that these questions that have already been raised—what was that date when they were raised originally? It was 1 March. I think it is significant that those questions were raised by Liberal members on this committee. I think the motion is simply asking that process be completed. It is a commonsense motion and I would think it would take common sense to support it. Certainly we support it.

Miss Martel: If the parliamentary assistant would like a motion to the effect that we reopen public hearings, I can certainly accommodate her. I am not in a position to do that yet, although I may well do that before this whole fiasco is over.

In any event, I want to go back and go through some of Hansard just to point out what the discussion was in this particular area. I am surprised at the position taken by the parliamentary assistant when I have just heard the Liberals in front of me saying that it was not a bad idea and that in fact there were many points raised during that course. Perhaps we should take a look at it, not to hold up the whole process of clause-by-clause, but certainly to take a look at having them in here when we deal with these particular sections. So I am not sure where we are going to end up when we have a vote on this section.

Mrs Sullivan: On a point of order, Mr Chairman: I think I should make it very clear that my remarks were made subsequent to those of the member for Sudbury East, who indicated that the motion regarding Mr Anand or a representative from the commission was the first of many of this nature that she wanted to put.

Miss Martel: I do not recall moving a motion that said we should reopen the public hearings. As I said, again, I can certainly do that to accommodate members and we can debate for a time, but on this particular one, I must say there was a great deal of discussion that went on around this



section. I am sorry Mr Carrothers is not here because he led the charge for most of that, although Mr Brown had a fairly significant section in here as well.

I think I should point out to members that when I questioned Mr Anand, in particular concerning the age distinction inherent in the bill, I asked him as a point of fact what would happen if this bill were passed with the age distinction in place and immediately a person who was over or under 45 went to the human rights commission and asked that his or her case be heard.

I think it is important that members recall what he said at that time, because it brings us to the fundamental question of whether this section is completely in violation of the Human Rights Code or not and what kind of chaos is going to result if this section remains intact and is passed intact.

Mr Anand said:

"I have to say that the code overrides other legislation....If other legislation, such as this bill,"—Bill 162—"if and when these provisions come into force, is found to contravene the code, it becomes inoperative, so that whatever the criteria are under the Workers' Compensation Act would not apply at all. You would be left potentially with a vacuum, potentially with a discretion on the part of the board, potentially some other result. But, if you understand what I mean, it is neither for us nor for a board or a court in that case to substitute another scheme"——

Mr Brown: On a point of order, Mr Chairman.

Miss Martel: I am almost finished, Mr Chairman—"but rather simply to conclude that there is a violation."

Mr Brown: We are not debating the specific clauses right now.

The Chairman: No, we are not. I was considering that very carefully when Miss Martel was speaking. I do think it is appropriate that she be allowed to make arguments as to why committee members should support her motion, though.

Mr Brown: I agree.

The Chairman: That is really what she is doing now, not debating the section of the bill. Miss Martel, have you completed your remarks?

Miss Martel: Yes. He then went on to say, and this is the final sentence:

"The result of adjudication under the Human Rights Code"—this is an important point in fact for someone coming in and being accused or accusing someone of age discrimination—"would be that the provision of the Workers' Compensation Act would be invalid. There is no recommendation; it would be legally invalid."

I think that if we are going to deal with this, we should have someone from the commission come in. It is important that we find out why their legal counsel feels this is inappropriate and why legal counsel from the ministry feels it is appropriate. I think we have a real problem here on how this is going to work in the future.

Hon Mr Sorbara: With the very greatest of respect for the former chairman of the Ontario Human Rights Commission, one must be very, very concerned when a quasi-judicial body renders a judicial view of the validity of a particular section of a bill, because it is very much like a judge telling litigants what he would decide in a court if a particular law were passed. I would have very great concern about that.

Miss Martel: If he deals with this all the time, I think he won't be—

Hon Mr Sorbara: I do not think I interrupted you, so I would just ask for the same courtesy.

The Chairman: Go ahead, Minister.

Hon Mr Sorbara: That having been said, I want to tell the members of the committee that as I and as we in the ministry reviewed the submissions, obviously, that was one that we had to take extremely seriously and examine very carefully. When you get to that clause of the bill, we certainly will be willing and able to provide you with the most careful legal analysis from the Ministry of the Attorney General, saying in effect that the provisions are within the framework of both the Human Rights Code and the Canadian Charter of Rights.

I want to tell you at this point, because I probably will not be here for those deliberations, that I wanted to be absolutely satisfied of that and have the best legal advice that we could get on that prior to determining whether or not we would be submitting amendments on that section. It was unfortunate that, at least in his submissions, Mr Anand did not consider this matter.

If you turn to subsection 36(1) of the current act, you will see a parallel provision that uses the same sort of age consideration to determine the levels of compensation. There, it is a case of compensation to a survivor of a deceased worker who is covered under the act. No one before the committee, certainly not Mr Anand, examined the jurisprudence under that section, nor has that section ever been challenged, nor has that section ever been rendered inoperative.

1700

I am not saying that that is conclusive evidence. I do not want to make the legal arguments here. We are discussing a motion as to whether or not to invite Mr Anand back to the committee. I just want to tell you that when you get to that section, we deliberated over that for very many hours and tried to satisfy ourselves to the greatest extent that we could that we were operating within the spirit and the framework of the Charter of Rights and the Human Rights Code and that the section could survive any challenge that would arise in those two areas.

Mrs Marland: I think, in fairness, that what the minister has just said is the reason the motion should be supported. What you have just said, Minister, is that you have deliberated over that particular section very extensively and you have heard the arguments pro and con and so forth. I thought the purpose of committee hearings was so that committee members may extensively review the matter before them.

All this motion is asking is that we have someone else whom we can ask

the same questions that you have asked. You are telling us that the Attorney General's department has given you an opinion. We are simply asking, by this motion, if we can ask for another opinion. I think that is the outright right of this committee and its members, quite frankly, to have people before them from whom they can obtain information and then base deliberations on that information.

I do not think it is fair for a minister to come here and say: "We have earnestly considered this. This is what we found out. We know we're okay." You may well be, Minister, but at least serve respect for the members of this committee, that we can have access to the same information. If you wish to have the person who gave you the opinion in the Attorney General's department come before this committee, that is fine. But we are just as entitled to have the person from the Ontario Human Rights Commission. In fact, it may be very constructive to have them both here on the same day.

That is all we are asking for. I do not know, but from where I am coming from I may well come around to the same viewpoint that you have, but I cannot in a vacuum of information. I do not see, and I say this with respect, that I have to accept what it is that you have been told until I have heard both sides of the issue.

I would think that you would rather have this particular item addressed in the public forum so that you will not be challenged on it in the future, so that people will not be able to say to you, "That bill is a crock because it conflicts with the Human Rights Code." I would think that is what you would want. That is all we are asking.

Hon Mr Sorbara: I would like to respond and then to excuse myself from the deliberations of the committee. I do not want to pretend to set the agenda of the business of this committee. I just expressed two things.

The first is a concern about the chairman of a quasi-judicial body rendering a premature opinion on the validity of a section. Imagine if this Legislature decided, as I hope it does, to pass the bill as it stands and then someone decides to challenge it and litigants go before the human rights commission. Neither party could expect a fair hearing, could they? The commission has already expressed its views on the validity. I do not think this committee is going to restrict anyone's ability to talk to whomever you want, to propose whatever amendments you choose, having taken those consultations for this section. What I want to tell you is that when we get to clause-by-clause, the ministry will provide that information if you so desire.

Mrs Marland: Will you provide us with the opportunity to hear from the authors of your information and to hear from the human rights commission?

Mr Dietsch: You have just said—

Mrs Marland: I am not asking you, Mr Dietsch, I am asking the minister.

Hon Mr Sorbara: I will certainly be agreeable to providing this committee with whatever it appropriately asks of me, as minister, during those deliberations. I am here to serve the committee and to follow the instructions of the committee.

The Chairman: I have Mr Wildman, Mrs Sullivan and Miss Martel on the list. I am sure members will not be repetitive but will make new points when they speak.

Mr Wildman: I have just two comments. The first one is that I think that last comment of the minister was helpful. It would be useful for us to hear both sides when and if we get to the particular clauses.

I have a housekeeping amendment that I would like to move.

The Chairman: Is this the one?

Mr Wildman: Yes.

The Chairman: If the mover of the original motion, Miss Martel, considered it a friendly amendment, we could build it in and vote on it all at once, if you like.

Mr Wildman: Yes, I think that would be the best way.

The Chairman: Go ahead.

Mr Wildman: You have it; you might as well read it.

The Chairman: Mr Wildman moves that the motion be amended by adding in line 3 after the word "him" the words "or if more appropriate, another member of the Ontario Human Rights Commission."

So what Mr Wildman is doing is, rather than saying it has to be Raj Anand, inviting him or someone else appropriate from the human rights commission.

Mr Wildman: I think it is obvious that the reason for the amendment is essentially that Mr Anand, as we all know, has resigned. I do not know how appropriate it might be to require the clerk to ask Mr Anand specifically. What we are hoping to get is someone from the Ontario Human Rights Commission. So that is the reason for the amendment and I hope that you will see it as a friendly amendment.

Miss Martel: I can be bought. No, I have no problem with that given the current circumstances surrounding Mr Anand.

The Chairman: If we regard it as a friendly amendment then, we could just build it in to the original motion. Is that agreeable to the committee? Okay. On the amendment, you have spoken adequately to it, Mr Wildman, I think.

Mr Wildman: Yes.

The Chairman: Mrs Sullivan, did you wish to speak?

Mrs Sullivan: Yes. I wanted to raise a point particularly in response to some of the remarks of Mrs Marland. I think that it is important for us as a committee to recognize that Mr Anand appeared before the committee as an intervener, having requested to do so, expressing his opinion on certain matters relating to the wording of the amendments to the Workers' Compensation Act.



He did that in the manner of any other witness coming before the committee, certainly with his experience and his opinion from the commission. But indeed, after that information was placed before the committee and after his opinion was placed before the committee, it was incumbent upon the ministry to seek the advice through the normal channels that it seeks legal advice from, and that is through the Attorney General.

Indeed, what we have had from the commissioner of the human rights commission is an opinion which has been taken into consideration. I believe that if we debate it further now, we are indeed debating the clause-by-clause situation and not the motion before us. I would like to get on with the motion. In my view, you have heard from the minister that indeed there was other advice taken from the place where it is normal for government to receive its advice, and that is through the Attorney General.

That advice will certainly be available to the committee at the point when we reach clause-by-clause, where these matters will be under consideration.

The Chairman: One final speaker, unless somebody else adds his name, and that is Miss Martel to wind up the debate on this motion.

Miss Martel: I am little surprised by the minister's comment that he finds it strange that a quasi-judicial body should be rendering judgement on what is going to happen with this bill. I find it strange particularly considering the organization we are dealing with, that is, the Ontario Human Rights Commission, which also administers the Human Rights Code.

Surely if there was any organization in this province that was well aware of discrimination in legislation passing through this House which it would declare to be discriminatory, then its viewpoint on this matter should be taken into consideration and, I might suggest, very serious consideration.

So I cannot see his problem about the commission discussing this issue and pointing out to us, having dealt with these kinds of issues for a number of years, exactly what it predicts is going to happen. It would seem to be far more logical for us to deal with that now than to have this legislation passed in its present form and deal with the chaos that is going to result.

1710

The other problem that I have is, of course, that we have been told that the Human Rights Code overrides every other piece of legislation. It seems to me that if that is the case, then the code is going to override the provisions of this bill if it is passed. Certainly, again, we are going to have all kinds of chaos in this province for the first person who actually decides to challenge this particular provision, if and when this bill is passed.

I think we should consider now, as a committee, having the group back. As the opposition, we are not privy, and perhaps even the government members were not privy, to whatever recommendations or advice was given the ministry by the Attorney General's office. I would certainly like to see legal counsel from the Attorney General's office come before us as well. But I do think that, based on the discussion that went on that day on the fact that Mr Anand had been cut off because we were trying to proceed with other delegations, we should have him or another representative from the commission come back.

If they come back with the Attorney General's staff on the same day and we can question them both, that is fine as well. but I certainly think that this committee has a right to hear further from them, not only on the age problem but also on the reinstatement problems, which I have not even dealt with, which he made mention of during his time here.

The Chairman: The motion has been put and a friendly amendment put to it. Is the committee ready for the question on the motion?

Miss Martel: My colleague is not here.

The Chairman: Are you asking for a 20-minute delay until he gets here?

Miss Martel: I would like to go and find him.

The Chairman: That is in order, if that is what you wish to do. The committee will come back at 5:30 for a vote on Miss Martel's motion.

The committee recessed at 1712.

1730

The Chairman: If members would return to their seats, we could have a vote. The 20-minute delay has been met and Miss Martel's motion has been put. Is it understood?

The committee divided on Miss Martel's motion which was negatived on the following vote:

Ayes

Marland, Martel, Wildman.

Nays

Brown, Dietsch, McGuigan, Sullivan, Tatham.

Ayes 3; nays 5.

The Chairman: Is the committee prepared to move on to clause-by-clause debate?

Miss Martel: We might as well get the second one over with while we are at it. Do not worry. This will not take as long. How much time do I have? If I get 10 minutes, in another 20 we will be all over for today.

The issue that I want to deal with, which I think is the second one to come out of the hearings that was particularly important, concerns vocational rehabilitation. Many of you will know, from the discussions two weeks ago when the minister and I went through a question and answer kind of thing in here, that I am not content to have it say that the majority or even all or even part of the recommendations from Majesky-Minna appear in this particular bill. I do not think they do. On the other hand, any of the government material that has come out in terms of this bill states widely that in fact those 84 recommendations have found their way into this particular bill.

The Chairman: I am sorry to interrupt you, but we do need a motion before us.

Miss Martel: I am coming to that. It seems to me that if we are going to determine whether those recommendations, which cost Ontario \$2 million, actually find their way into this bill and will ensure a better rehabilitation system at the Workers' Compensation Board, then it will be incumbent upon this committee to hear from either one or the other of the chairpeople of that committee to determine whether the recommendations are in this particular bill and whether it is their opinion that the system is going to change from what they evidenced when they were on the road.

The Chairman: We are quite happy to entertain the arguments you put, but it must be done after you have moved your motion.

Miss Martel moves that this committee direct the clerk to invite the co-chairpeople of the Majesky-Minna task force to appear before this committee to clarify whether their recommendations appear in this bill and whether these provisions will make the rehabilitation system more effective at the Workers' Compensation Board.

The Chairman: Do you wish to speak to your motion?

Miss Martel: Yes. Members will remember that two weeks ago, there was a fairly avid discussion between the minister and myself over the Majesky-Minna report and its recommendations, all 84, and whether those recommendations had found their way into this bill.

Members will recall that during the course of the hearings we not only heard from one of the worker representatives on that particular task force, Bernie Young, who travelled with us a great deal at that time, but we also heard from one of the employer representatives, Jack Corrigan from Inco, who said as well when questioned that the decision to have rehabilitation as a mandatory right had been unanimous and that he continued to support that even as an employer representative.

It seems to me we heard not only from those two people but from many other groups that in fact appeared before the Majesky-Minna task force and gave their case as to how and why things should change at the board in regard to rehabilitation. All those labour groups said that the recommendations had indeed not found their way into this particular act, that rehabilitation was not going to be any better or serve injured workers any better as a consequence and that it seemed to them, and to me, a complete waste of taxpayers' money, time, energy, etc, that those recommendations have not appeared.

On the other hand, the minister has said on many occasions, both in written material that has been given out by the ministry in regard to this bill and in statements made in the House or responses to questions, that the majority, if not all, of the recommendations are contained within this bill. I think we have a great contradiction between people who actually sat on the task force and know what the story was and what they heard as the task force travelled around the province and the minister who is trying to claim that those provisions are in this bill.

I do not think they are. I think if we are going to make rehabilitation effective in this province, if we are going to do the job the task force recommended, which was a complete overhaul of how rehabilitation was provided at the board, then we should have that group before us to determine whether the recommendations have been implemented and, if not, to ask whether they see that the present recommendations are going to make the system any better than



it was when they were first asked to go around the province in 1986 to determine what was wrong.

I think if we have got a bill in place, and a big section of the bill deals strictly with rehabilitation, it is incumbent upon us to ensure that those recommendations are put into this bill so we can make the system better. We have two very opposing views on whether they are included or not, and that is why I am recommending to the committee that we have Wally Majesky, Maria Minna or both come before this committee and give their opinion in that regard, so we know whether we are making a better system or putting a better system into place.

Mr Dietsch: I believe that copies are being made, but I will go from memory of the reading of the motion. As I understand the motion, the member would like to have the co-chairpeople of the Minna-Majesky task force come before the committee. Quite frankly, there were a number of times that individuals on the task force appeared before the committee when it was on the road bringing forward a number of concerns.

I think there has been a very significant public airing of this portion of the bill. I cannot help but comment that the member is doing an excellent job in bringing forward comments from her leader, in terms that they would do everything humanly possible by the procedural approach to delay and stall the passing of the bill.

Today being the first day, and having gone through a number of debates already, albeit that they centred around only two resolutions, we are off to an excellent start of the member being, I guess, told to live up to her leader's position. I hope that we would get to the clause-by-clause approach soon and I expect we will get there soon, but certainly I cannot support this resolution.

It has had a good public airing. There are amendments in, and I think the government has done a job. The committee has done an excellent job in terms of hearing the concerns and dealing with them. It would be nice to get on with the rest of the clause-by-clause, but I would not be surprised if there were other motions.

1740

Mrs Marland: I support this motion probably for the very fact that Mr Dietsch just said, that there were many people who came before us during the public hearings who referred constantly to this report. I do not quite understand what Mr Dietsch meant when he said we have heard quite enough about the public airing of this section of the bill.

We are not discussing a section of the bill at all. We are not talking about a public airing of a section of this bill, which is the very thing you just said. I do not know what you meant when you said that, as a matter of fact. When Mr Dietsch reads the Hansard of what his comments were a few moments ago maybe he will be happy to explain to the committee what he meant.

It is not uncommon for committees to recall people they have heard from during presentations on legislation or, in their wisdom, to invite more witnesses and people to present information to a committee. This motion and the motion that preceded it were not asking for more public hearings. They are motions in regard to specific people or specific organizations, namely, the Ontario Human Rights Commission in the first place, and now the authors of a \$2-million report.



If this committee does not wish to have any more input on Bill 162 from the author of a \$2-million report, which was commissioned, by the way, by the Liberal government, then so be it on the heads of the Liberal members of this committee today. It is really astounding to me that the only comment that can be made—I can only speak of Mr Dietsch because he seems to be the only one who is speaking for the Liberal members on this second motion. I am amazed that the Liberal members, if Mr Dietsch is speaking for them, are willing to suggest that the only purpose of these motions is to delay the proceedings.

My only purpose in speaking to support these motions is that I want to make as informed a decision as I possibly can on each clause of this bill as we go through it. If the taxpayers of Ontario have spent \$2 million on the Minna-Majesky task force in investigating this very matter that Bill 162 addresses, why would we not invite them to come before the committee to question them on their recommendations and to ask them about the basis for their conclusions?

Maybe Mrs Sullivan can clarify it because she was sitting close to the minister, but if he said earlier today that in fact some of the Minna-Majesky recommendations are addressed in this bill, then I do not see what the problem is in inviting the two of them before the committee. For the very fact that there have been so many references to this report, it would certainly be very much in order to have those people here and be able to discuss with them the implications of those sections of Bill 162 that they particularly would probably have addressed through their recommendations that were not included in the bill; also their recommendations that were somewhat addressed by certain sections of the bill.

If there is one thing that the government is criticized for, it is spending multimillions of dollars on reports and then putting them on the shelf to gather dust. Frankly, I think Bill 162 at the moment—and it is not passed, so there is still hope—represents a piece of legislation written, I presume, after the Minna-Majesky report was written, yet it does not include the major areas and recommendations that that report addressed. So I think that begs the question here: Why waste taxpayers' money having these reports done if they are filed either in the round file or on the shelf? So we spend \$2,000,000. What do those people know? What do those people care?

I think what really has to be appreciated by all members of this committee is who sat on that commission. You cannot say, "Oh, they are a bunch of injured workers, a biased group"; nor can you say, "It was all commerce and industry and the employers." It was not. It was a tremendous cross-section of interests and concerns and, in fairness, I think the government was on the right track to commission that particular group of people with that particular responsibility. If it took \$2,000,000 to do it and there was a benefit for employers and employees in the future in this province, then the money was worth it.

As a committee looking into a bill addressing workers' compensation in this province, if we are now saying that there is nothing to benefit us by hearing from the co-authors of the Minna-Majesky report, then I think we are burying our heads in the sand. I thought that elected members in this Legislature would have been more realistic and would have wanted to hear from those two people the logic and thinking behind their recommendations.

The committee could still ignore them. I have not studied this report and would challenge any members on this committee as to how much, if at all, they have studied the Minna-Majesky report.

Miss Martel: I have.

Mrs Marland: With respect, the member for Sudbury East has studied it. I do not happen to hold that responsibility for my caucus, so I am not apologizing for the fact that I have not studied it. I am certainly being very honest and open in saying that. I have read the recommendations. For those members who may vote against this motion, I wonder how much of the report they have studied. If they have read it and studied it, I am sure they must have questions of the co-authors.

It would be very interesting if they decided to close their ears and their eyes to the opportunity of asking questions on the report that they may have read or studied, and also maybe to extract conclusions that might in fact support the government on its Bill 162. You could use it either way you wanted to.

They might say: "Oh no, we do not want to hear from anybody else. We are just going to go through this Bill 162 now. We have finished. We have had all the input we need and we do not need to hear any more. We just want to go clause by clause, get this bill passed and finished. That is all we are here for." But I do not happen to think that is all we are here for at this stage on this committee.

If we can still benefit from hearing new information through our clause-by-clause examination—and I am not talking about going to the self-interest groups, as you may well describe some of the people we have heard from already; I have heard the members of this committee say that we have been hearing from self-interest groups—this is one group that represents everybody's interest. If you do not want to hear from them and do not want to benefit from that, then that is your choice, but so be it; it is your choice. It is also today, with this motion, your opportunity and I hope you will support it.

1750

Mrs Sullivan: There is no question that for both employers and injured workers the question of vocational rehabilitation is a significant one. Much of the time of our hearings was certainly taken up in addressing issues that were raised by employers, injured workers and those who spoke on injured workers' behalf.

I think that if you are familiar with the Minna-Majesky report, you will recognize that many of their recommendations revolve around administrative matters that have to be dealt with in an administrative way. Other recommendations, of course, but fewer of them revolve around matters that could be addressed in a statutory manner.

Indeed, in our first hearings we heard from the Workers' Compensation Board about new rehabilitation strategies for vocational rehabilitation that were being put into effect at the board. That was certainly a major part of the Workers' Compensation Board presentation. Additionally, there are some portions of the recommendations of the Minna-Majesky report that are included in the bill. I hope they will be addressed thoroughly during the clause-by-clause analysis the committee undertakes.

I also want to tell members of the committee that the ministry is preparing and will be able to table with the committee early next week a summary and an analysis of the implementation of the Minna-Majesky report,

both in administrative terms and in statutory terms, and the planning for implementation of that report.

In my view, that would be of use to the committee in terms of providing new information. I think it is clear that because there has been much misunderstanding about how implementation can occur, some of the issues were a little clouded during the hearings. It is very clear, though, that there is an emphasis both by the board and by the ministry on ensuring that some very positive proposals and recommendations that came from Minna-Majesky are incorporated in the way we deal with vocational rehabilitation.

On that note, I am prepared to say there will be a report put before the committee that I think will be of use to all members.

The Chairman: A couple of other members have indicated a wish to speak.

Mr D. R. Cooke: Mr Chairman, I am not a regular member of this committee, but I understand that Miss Martel and Mrs Marland have been members of the subcommittee that planned the hearings initially, and I understand that at least one member of the task force has appeared before the committee, perhaps on several occasions. I do not understand why this sort of clarification was not obtained at that time or why, when the subcommittee meetings were arranged, the issue of having the co-chairmen appear before the committee was not raised at that time, or if it was, what was the result?

Mrs Marland: We would want them after the amendments.

Mr D. R. Cooke: In any event, obviously Mrs Sullivan has indicated that we are going to be given a resumé of the legislation as amended or as it is proposed to be amended with the task force. I would suggest to Miss Martel that she hold down her motion until we see that.

Mr Wildman: We are here to deal with this legislation and in effect to write legislation. It seems to me it would be useful if we are here, from whatever our positions politically, with one desire in mind—that is, to improve the workers' compensation system for injured workers in the province and for other parties who are affected by workers' compensation—that we should be doing all we can to ensure that what we write is adequate and will do what we want it to do. I think it would be useful for us to have the authors of this very important task force report and its recommendations before us here.

I think Mrs Sullivan was correct when she said some of the comments made before the committee in our hearings clouded the issue. That is all the more reason we should have Minna and Majesky here, if we can.

I welcome the indication the ministry is going to provide a summary of changes in the way the Workers' Compensation Board deals with vocational rehabilitation, but as Mrs Sullivan indicated, most of those changes are administrative. They do not deal, as I understand it, with the central proposal from the task force, that vocational rehabilitation become a statutory right. The board on its own cannot do that. The ministry, through regulations, cannot do that. Only we as members of the Legislature can pass that.

Frankly, I think the summary will be useful to us, because I am concerned that some of the statutory proposals being made in this legislation



will not only not fulfil the recommendation of the task force but will make it even more difficult for injured workers to receive the kind of vocational rehabilitation that now, inadequate as it is, is available to them. I will not run through them, but right now for instance, anyone with a claim can apply for rehabilitation. This legislation we have before us would limit that.

It has been suggested through our hearings that it might be difficult to word a clause in a bill like the one we have before us that would deal with vocational rehabilitation, because vocational rehabilitation, if it is to be successful, must involve consultation and the design of a program specifically related to the individual. I think that is of serious concern. But as I understand it, the Majesky-Minna task force did in fact look at the Quebec system and did suggest statutory language that is used in the Quebec legislation that might be used in Ontario. I think it would be very useful to this committee to have representatives of that task force come before us to talk about how a clause could be worded that would indeed—

Mr D. R. Cooke: That is our job.

Mr Wildman: Of course it is our job, but none of us, at least I do not think any of us, is an expert on vocational rehabilitation. Some of us perhaps are lawyers and are good at drafting legal wording, but I do not think it would hurt at all for us to get the advice of the people who carried out an exhaustive set of hearings and analysis of vocational rehabilitation problems at the Workers' Compensation Board, and then made a very extensive report to the government and the public of this province, as has been indicated, that cost approximately \$2 million.

The fact is they made recommendations that talked about the statutory right to vocational rehabilitation. All of us who know this bill and the amendments to the bill introduced by the government must admit that nowhere in this legislation is there a statutory right to vocational rehabilitation, and that was the central recommendation of that task force commissioned by the government. Perhaps there is some way that proposal can be put into legal language that could be incorporated in this bill.

As a member of this committee, I would like to hear from the task force and hear its advice on this matter so that we can do it, so that we will actually be improving vocational rehabilitation when we come to the sections that deal with that rather than perhaps limiting it in a way so that workers will not even get the kind of vocational rehabilitation now available to injured workers, because we will have passed legislation that is inappropriate.

The Chairman: There are two other people who wish to speak and the clock is at six.

Mr D. R. Cooke: I move we carry on. Can we unanimously agree to carry on?

The Chairman: I do not think that will happen. I think I have a sense of the committee. Is it the wish of the committee that we deal with this motion and finish the debate on it tomorrow afternoon when the committee begins? I will not be here but I am sure that—are there people who still wish to speak? Mr McGuigan and Miss Martel. So tomorrow the debate will conclude on Miss Martel's motion and we will proceed with clause-by-clause presumably. All right? The committee is adjourned until tomorrow afternoon.

The committee adjourned at 1802.



### **HANSARD REPORTING SERVICE**

Room 481, Lègislativè Building, Queen's Park, Toronto, M7A 1A2

Telephone (416) 965-1456

Index Inquiries: (416) 965-2159

**Editor of Debates:** Peter Brannan

**Deputy Editor of Debates:** Ernie Hemphill

**Editors:** Don Cameron, Chief; Alex Jenkins, Deputy Chief; Edward Patrick, Supervisor; Pierre Beauchamp; Karen Bennett; Liese Binnie; Larry Bruner; Drummond Burgess; Deborah Caruso; Anne Lynas; Wendy Mills-Descheneau; Liz Renzetti; Steven Smal; Janice Spellerberg; Sheila Wawanash

**Reporters (Tape):** Kit Anderson-Knight, Administrator; Margaret Elkins, Wilda Ferguson, Supervisors; Jean Andrews; Sandra Arrizza; Peggy Brooks; Carolyn Brown; Sharon Chalupiak; Danica Dolenc; Margaret Grobicka; Richard Hilson; Barbara Milnes; Sonia Nesbitt; Chantal Perron; Margaret Prince; Mary Sutton

**Reporters (Shorthand):** Pat Girouard; Beth Grahame; Carol McIntosh; Maureen Murphy

**Reference:** Patricia Tolmie, Co-ordinator; Teresa Hamilton; Lynda Middleton

**Index:** Elise Sloga, Chief; Alison Sawatzky

**Editorial Assistants/Printer:** Corrine Marnoch; David Woodruff; Eamon Kade

**Secretaries/Receptionists:** Edith Landry; Ethel Allan

**Messengers:** Stephen Marshall; Mani Pascucci

CA20N  
XC13  
-578

R-4

STANDING COMMITTEE ON RESOURCES DEVELOPMENT  
WORKERS' COMPENSATION AMENDMENT ACT, 1989  
THURSDAY, 8 JUNE 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Cooke, David R. (Kitchener L) for Mrs Stoner

Mackenzie, Bob (Hamilton East NDP) for Mr Laughren

Clerk: Mellor, Lynn

Witness:

From the Ministry of Labour:

Sorbara, Hon. Gregory S., Minister of Labour (York Centre L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, 8 June 1989

The committee met at 1557 in room 151.

WORKERS' COMPENSATION AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

The Vice-Chairman: Yesterday, when we adjourned, the committee was debating a motion that had been placed by Miss Martel. Mr McGuigan had the floor.

Mr McGuigan: I just wanted to pass the idea that it is the government's responsibility, regardless of the particular party that government represents, to write the legislation. We seek the advice of a great many people, including people who write reports, but we do not give those people the job of writing the legislation. We study their recommendations and adopt those that we think are appropriate at the time. I just want to point out that opposition members are very experienced, very eloquent people and when they come to those particular clauses in the legislation they have the privilege and indeed the duty to offer amendments and to bring forth the very arguments that come from the Minna-Majesky report or any other report or from briefs or whatever.

Certainly, speaking for myself, I have confidence in their ability to present those points of view. Therefore, I do not believe that we need a review of the committee that presented and wrote the report or came here and spoke about it. So, I would have a hard time voting in favour of this move.

The Vice-Chairman: Just before we proceed, I neglected to ask if the minister or his representative was going to be coming. I do not know, should we—

Mr Dietsch: The minister will be coming.

The Vice-Chairman: Is it acceptable that we proceed with this motion or would you rather wait until he arrives?

Mr Dietsch: I do not know if there is any more debate on the motion.

The Vice-Chairman: There are two more speakers on the motion.

Mr Mackenzie: I think we should wait until he arrives.

The Vice-Chairman: Well, I am in your hands. If you would prefer to wait, then it is fine. I will recognize Mr McGuigan again, if he wishes, when the minister arrives.

Mr Dietsch: As I understand, is it the interest of the members to speak when the minister is present? Is that what you are saying?

Miss Martel: Yes.



Hon Mr Sorbara: I am sorry, Mr Chairman.

The Vice-Chairman: No problem. I really should not have started ahead. I thought we would get the motion out of the way.

All right, Mr McGuigan had the floor. I will recognize him again if he wants to make any additional comments.

Mr McGuigan: I guess all I can do really is to repeat what I said previously and that is that the government has the responsibility and duty of writing legislation and, in so doing, it takes recognition of various reports that are specially commissioned. It also takes recognition of research in libraries and public hearings in a great variety of ways. It does not give the responsibility to any other person or any other group to write the legislation; that is one that is done by the government.

In that whole process, when we come to clause-by-clause consideration, members opposite, whom I know from my almost 13 years here—in fact, my anniversary is tomorrow—are very clever and articulate people, and they will be able to present amendments and arguments to each individual clause, backed up by the Minna-Majesky report or any other report.

They are as familiar with that as the authors. I think that is the time to make their points, and then they have not only the opportunity, but the obligation as members of the opposition, to do that. That is what makes the process work. So, with great respect, I certainly could not support Miss Martel's motion.

The Vice-Chairman: I thought, Miss Martel, you might want to close off debate, but that is—

Miss Martel: I do not know that I will close off, even with these comments, so I will start.

I appreciate Mr McGuigan's comments. I think though, if members review what I had said yesterday when I prefaced my remarks as to why I was moving this motion, if they read through it again, they will see that a great part of my concern was the disparity or conflict between: on the one hand, the minister's statement that in fact most, if not all, of the recommendations of the Minna-Majesky's report had been incorporated into this bill or by the Workers' Compensation Board; and, on the other hand, that of the representatives from the task force itself, who came before this committee while we were on tour and told this committee that this was not true and that in fact very little, if any, of the recommendations appeared in this particular bill.

I think that the integrity of that particular task force has been called into question or has certainly been jeopardized if they are saying: "Indeed, we are the task force. We look at the recommendations and they do not appear in this bill." Yet the minister in his statements and certainly in the government material on rehabilitation concerning this bill says quite the opposite.

I think they also deserve to have their day in court and tell us exactly whether these recommendations appear. If they do not appear, do they really anticipate that the bill, as written, is going to make rehabilitation any better at the board? I suspect they would tell us that they do not.

If I can just give some examples in that regard, members will recall that two weeks ago the minister was in and we had a fairly lengthy discussion about rehabilitation. The minister at the time said: "What I am trying to tell you is that it would be unfair to represent to this committee that the work of Minna-Majesky task force has simply not been heeded by government or by the board. It just would not accurately reflect the realities of what has taken place since the report was completed and this bill is considered this day in this committee."

I would like you to contrast that statement with the statement made by Wally Majesky, who I point out was a co-chair of that committee, at a news conference here in this place on 18 May 1988. Mr Majesky said: "The new WCB vocational rehabilitation strategy has rejected approximately 87 per cent of the task force recommendations or 73 out of a total of 84. It is obvious to me that the WCB is still driving a 1914 model of rehabilitation but what they have clearly and cleverly done is redesign the outer body so as to give it the look of a sleek, new vocational rehabilitation structure. But underneath that gleaming new exterior is the same outdated engine which will continue to work to the detriment of injured workers."

I think that is a fairly significant statement to make. Yesterday the parliamentary assistant told this committee that this committee would be provided with information concerning the implementation of the vocational rehabilitation strategy at the Workers' Compensation Board. She tried to suggest that once we saw the strategy, members of the committee would see the light of day and would recognize that the board has moved on many of these recommendations. I think it is fairly clear to members that Mr Majesky, having reviewed that new strategy, does not agree with that. I would think he would probably be one of the ones most capable of determining whether they had been implemented, considering that he was the chair of that task force.

I, for one, am not going to be looking forward to seeing what the board has to say via the ministry next week because my concern is that it is the same strategy that they have implemented, which is a completely ineffective strategy, which places limits on the amount of rehabilitation a worker can receive, a policy that went into effect in January 1989. I can appreciate Mr McGuigan's statement that it is the government that makes laws in this province. However, I do think the credibility of the group that did some tremendous work in this regard is certainly at stake.

I certainly think that if we are here as a committee to try to do something about rehabilitation at the board, since it has already been proven how terrible it is, then certainly the recommendations of that committee should be implemented into this bill. One of the co-chairs of that task force has said categorically that it does not appear in the vocational rehabilitation strategy. We heard from task force members during the committee hearings that it does not appear in this bill.

I think they should have a right to come before us and give us their idea, again. Maria Minna can come, as well. She was a Liberal candidate; that is fine. I will listen to her as well as Wally Majesky. They can come and contrast what they have to say against what the minister has said about rehabilitation in this bill, because I think there are two very different stories here and we deserve to find out which one is, in fact, correct.

The Vice-Chairman: I have one more speaker on the list and it is Mr Mackenzie. I want to remind members of the committee, before Mr Mackenzie takes the floor, that we are, indeed, discussing a procedural motion here on

whether we invite the co-chair people of the task force before the committee. We are not at this point debating clauses of the bill or the task force report.

Mr Mackenzie: I will try to keep within that framework, although it is difficult because the remarks that have been made about one of the central issues in WCB reform, whether rehabilitation is or is not covered, are fundamental to this discussion we are having.

I was not here for it, but I read with care the motion that my colleague moved that this committee direct the clerk to invite the co-chairpersons of the Majesky-Minna task force to appear before this committee to clarify whether or not their recommendations appear in this bill and whether or not these provisions will make rehabilitation more effective at the Workers' Compensation Board.

1610

The argument that they do and that it will has certainly been central to part of the remarks and part of the selling job that the minister himself and some of the board people have tried to do. I reject it categorically. The Majesky-Minna report made, I believe, 83 or 84 recommendations. I do not find one of them in total, maybe small parts of a handful of them, encompassed in that report. That questions the credibility of those who are arguing that they are included and that an issue that is fundamental to reform in workers' compensation is being dealt with.

I am going to stack against the comments of the board, which unfortunately has little credibility these days, the minister himself and those who have argued that they are part of Bill 162, a few comments of the people who met with the Majesky-Minna. Never mind Mr Majesky's comments that have been read to you clearly. He was only the chairman of it, was with it almost night and day for the entire time that it travelled the province and says it is not covered in this bill. That is certainly what I say as well.

Let's take a look at some of the other people who were very much involved, for example the Canadian Auto Workers' council. The committee is rightfully proud of the fact that it was responsible for many of the initial investigations that brought about the Majesky-Minna report and is very disappointed that, for the most part, those all-important recommendations have been ignored.

I have gone through some of the union wars; I have been a member of both the steelworkers' and auto workers' unions for a good number of years. They are respected, knowledgeable and articulate unions with good research, good staff people and they spend one hell of a lot of money on Workers' Compensation Board problems as well. They have clearly said that the Majesky-Minna rehabilitation recommendations are not part of this bill.

Let me go to the Ontario Nurses' Association while I am at it. "The government, instead of promoting and providing a right to rehabilitation as contemplated in the Majesky-Minna report, places far too much discretion in the hands of the Workers' Compensation Board." Is it not telling the truth? I always thought the ONA was a pretty responsible group. We have it on the same side of the issue as we have the CAW council, very clearly.

What about the Labourers' International Union of North America? The minister, I am sure, is aware of some of their members. "Successful rehabilitation offers the only opportunity to reduce the real cost of



industrial accidents to injured workers and government and the only way of reducing WCB awards. Bill 162 does nothing to improve prospects for rehabilitation." The Labourers' International Union, a big outfit in the province of Ontario which also probably has one of the higher rates of injured workers, is it wrong? Is it telling a lie? Or is somebody else wrong in terms of the arguments that are being made with respect to this bill?

Let me go to the Union of Injured Workers in Sudbury. There is a long history of fights and injured workers' cases in Sudbury. The injured worker community had hoped that Bill 162 would solve the past problems and provide a new direction in vocational rehabilitation. However, we believe that Bill 162 falls disastrously short of reflecting the vocational rehabilitation needs of injured workers. Well, maybe it is a little more suspect because it is an injured workers' group and it has been so adamant in its opposition to this. Their position certainly does not agree with the one the minister and the defenders of this bill have been promoting around the province of Ontario. Take a lot of respect.

The next one is my own union, United Steelworkers of America, District 6. The Majesky-Minna report—

Mr Dietsch: On a point of order, Mr. Chairman: I appreciate the comments that the member is making in terms of putting forward his viewpoint with respect to members who shared comments with the Majesky-Minna task force. However, we are not really talking about that in this motion. We are talking about the co-chairmen coming before this committee.

Mr Mackenzie: That is right.

Mr Dietsch: I respectfully suggest that regarding some of these comments that are being made I would appreciate an understanding from the chair as to whether they are in order or not.

Mr Mackenzie: I do not know how they could be any more in order with the motion that is on the floor.

The Vice-Chairman: Order. I think your point of order is not a point of order but rather a point of view. I do remind Mr Mackenzie, though, that indeed we are discussing a procedural motion. Perhaps he could relate his comments to the question of whether or not to invite the co-chairmen to the committee.

Mr Mackenzie: If I can continue, let me once again read the motion: "That this committee direct the clerk to invite the co-chairpeople of the Majesky-Minna task force to appear before this committee to clarify whether or not their recommendations appear in this bill and whether or not these provisions will make rehabilitation more effective at the Workers' Compensation Board."

The motion is very clear. I know Mr Dietsch does not like to have the other arguments put, but we know where he stands no matter what anybody says on this bill.

Mr Dietsch: I always enjoy listening to you.

Miss Martel: You will hear a lot more.

Mr Mackenzie: We are dealing with the credibility of the ministry



and Workers' Compensation Board arguments that Majesky-Minna rehabilitation recommendations are included in the bill. I do not think we are going to get to the bottom of that without having the actual authors of the bill, who themselves toured this province, here to tell us whether these people are right or whether the minister and the ministry staff are right.

I would like to put some of the other positions. What I am trying to do is to make it clear that it all seems to be coming from one small group that somehow or other these recommendations are included. The motion says they are not and the motion says we should find out. I think that is a valid suggestion.

My own union: very much involved, and a lot of money in workers' compensation. "The Majesky-Minna report recommends a case management approach to vocational rehabilitation. The task force recommendations in general emphasize respect for individual dignity and quality of life, and the system recommended by the task force would ensure comprehensiveness and continuity of the provisions of vocational rehabilitation services. The meritorious recommendations of the task force have not found their way into Bill 162, either in spirit or in substance."

I am hoping there are some good answers for these, but I do not know how we are going to get them. We are certainly not going to get them, other than from one side, unless we have the people from this task force before us.

The Provincial Building and Construction Trades Council of Ontario, another heavy area when it comes to Workers' Compensation Board cases: "Bill 162 does not answer workers' concerns about the inadequacy of the rehabilitation services provided by the WCB. The government acts as if the task force on vocational rehabilitation never took place." Does that say we can depend on what is in this bill with respect to the Majesky-Minna recommendations?

Lakeshore Area Multi-Service Project: "Certainly vocational rehabilitation is one of the most challenging aspects of the workers' compensation system. It is difficult to see how Bill 162 will change things very much, however, especially with the board as gatekeeper to access."

Canadian Union of Public Employees, Ontario Division, the biggest union, for what size is worth, in the entire province of Ontario: "The system can never be successful without a genuine and effective commitment to rehabilitation. Such a commitment has never arisen voluntarily from the board, and our members know that as long as the board retains discretion over rehabilitation, it never will. Only when the injured worker has a statutory right to rehabilitation and a corollary right to reinstatement will there exist even the possibility of such a commitment."

Are they wrong? Are you people prepared to challenge what they have said and say these people are not telling the truth? I would find it very interesting. It may be funny to Mr Brown and some of the members, but I would like to know whether or not they would tell these people that what they have said is not true and that it is obvious the only one who is telling us the real story is the minister and the board.

The Labour Council of Metropolitan Toronto and York Region, and I think this is significant: "The Ontario government commissioned a lengthy, costly and...excellent report on rehabilitation, the Majesky-Minna report. Yet soon after...the same government introduced legislation on the subject area studied which ignores the changes advocated in the report...The legislation provides

a right to a vocational assessment but does not direct the board to provide services to the worker even if the assessment shows the need for them."

Is the Metro Toronto labour council wrong? Are you going to tell them that they are not telling us the truth when they very clearly say it is not included in this particular piece of legislation? You may be on record anyhow, but I would clearly like some of you to tell, not the Metro Toronto labour council or the groups that I have raised here, but Majesky and Minna, the task force chairmen, that these people who are all, in effect, backing up exactly what Wally Majesky said are wrong and that only the minister or the board is right.

The final one, the Canadian Union of Public Employees, national office: "The fantasized problem that permanently injured workers will demand too much or too expensive rehabilitation could not possibly comport with the well-documented present problem of massive numbers of permanently injured workers being abandoned by the board and cast on to the industrial waste heap."

1620

We are debating a motion by my colleague that says we should call before us the Majesky-Minna people, the task force people who met across this province, as I said, and produced this report. We should ask them or have them give testimony as to whether or not the report, which was commissioned by this government, is incorporated or the recommendations or even a fraction of the recommendations are incorporated in Bill 162. I submit to you, as we have submitted in the House very clearly, that they are not. I do not think anybody here will argue—I would love to have them on record if it is their argument—that rehabilitation is not one of the central features and one of the necessities in terms of any reform of the Workers' Compensation Board.

If that is one of the things we are trying to do with this—unless it does not mean anything and somebody now wants to change his position—then I think we have a right to have before this committee the authors of the task force to tell us whether or not their recommendations were included, whether they misled the public, if that is the word, or did not tell the truth when they said "No, they are not included." Or was it on the other side of the issue that the public was being misled? I think that is a valid question because this issue is so fundamental to Bill 162.

I want to say also that I was a little disgusted—I am sorry he is not here, so I will be mild in my remarks—with the member for Essex—whatever—it is—who says he trusts the people who tell us that it is there and that those who produced the bill know what they are doing. I guess he does not trust all of these other people; I am not sure. But he wanted to know why are we really raising such an objection. One of his words was "clever," and I thought it was as condescending as hell, but obviously we are clever enough that we can tell them if some of it is not covered. We are very clearly telling you it is not covered in this bill. We are also clever enough that we could move amendments that might adjust it. We can also tell you very clearly that this bill is so lousy that I do not think amendments will adjust it. There is no question in my mind on that, unless in the rehab section alone you somehow or other want to endorse the 84 recommendations of the Majesky-Minna report.

I think the arguments are valid. They are legitimate. They deal exactly with what is before this committee in spite of Mr Dietsch's remarks. I think it is legitimate that we ask that these people be called before this

committee. If we do not know whether or not the rehab recommendations are covered in this bill, we should not be proceeding with this bill. It is not even half a bill without vocational rehab effectively included. We only have two basic positions here, the minister's and the board's, and almost everybody else's. That simply is not good enough for me and it should not be good enough for members of this committee, although I suspect their marching orders have already been decided.

The Vice-Chairman: Do any other members wish to comment on the motion?

Miss Martel: There was a statement made by the parliamentary assistant yesterday that the question of rehab was significant, had been carefully considered by the ministry and took up much time of the ministry. She also went on to say that, again, most of the changes had been implemented; that is, the changes with regard to Majesky-Minna and in fact they appeared in this bill. But she also tried to point out that many of those changes were administrative by nature and probably did not deal a great deal with the delivery or the structure of rehabilitation at the board.

Following from that, Mrs Marland also made a statement that she herself had not looked at the recommendations so she was not in a position to comment, but she made a statement that most members of this committee probably would not have looked at it either. I think she was probably right in making that statement because anyone who had taken the time to take a look at the bill and contrast what was in the bill with the recommendations made by Majesky-Minna would find, and quite rightly so, that most of them do not appear.

For the benefit of those committee members who I do not believe would have read the recommendations from Majesky-Minna, I think it is appropriate that at this point in time I read some of them into the record. It seems fairly obvious to me that members across will know what is in the bill if they have been following the hearings. They will understand what is in the bill under the section on rehabilitation. They will clearly see that the recommendations that appear here do not appear anywhere in the bill. There comes the need to have Majesky-Minna before us in order to clarify their position, in order to state their position with regard to whether what the minister has said is correct or whether they are correct and whether what is in the bill will make rehabilitation any different from what has gone on before, which as everyone knows in this group has been an absolute disgrace.

The Vice-Chairman: Miss Martel, I am sorry; I do not think it would be in order. I am not ruling in any way because you have not yet proceeded in that way, but I do really think it is not time for us to be debating the content of the report of the task force or the particular section of the bill that deals with rehabilitation. We are here dealing with whether or not we should be inviting the co-chairmen. I am prepared to listen to what you have to say, but I would caution you that you should indeed relate it directly to the import of the procedural motion.

Miss Martel: If I go back to the motion, which has been reinforced by my colleague, I can go through it again. I am not only calling on this committee to invite the co-chairpeople of the task force; I am asking the committee to do that particularly because the recommendations of that report do not appear in the bill. There is a significant question of their credibility versus the credibility of the minister, because in fact the recommendations do not appear.



I think it is fairly significant that members have some sense themselves of whether or not they think they should appear because that is the essence of the motion. I do not want them to come back here and talk about nothing. I want them to come back and outline specifically whether all the work they did for many months, at a cost of \$2 million to the taxpayers, appears in this bill or not. The minister has suggested they do. I would think we would find we have already heard from Wally Majesky stating that is not the case.

I think it is important that some of the recommendations be looked at just to reinforce the reason they should be called back before us and why we should get a clear airing from the co-authors of this report as to whether the work they have done has been shelved or appears in this bill.

In terms of just the structure of the organization itself, we got into the problem last week that the minister did not even bother to change the name of the Workers' Compensation Board in order to reflect the importance of rehabilitation. The committee recommended that as well. It recommended that the name be changed to the Workers' Compensation and Rehabilitation Act. From there, the name of the board should have been changed. That was not done.

A most important consideration on their part was that the Minister of Labour should add an injured worker and a vocational rehabilitation practitioner to the corporate board. That was not done. That does not appear in this bill anywhere.

Mr Dietsch: On a point of order, Mr Chairman: With all due respect, if we are going to go through every one of the recommendations that are in the report and make comments on whether it has been done or not, I truly think that is completely out of order. I think for the member to suggest that other members of the committee have not read the report as part of the ongoing process when dealing with a number of the presenters before us and the whole issue of Bill 162 is completely disgusting. I think for her to make an innuendo in that respect is not good. Is that how we are going to do it? We are going to do every recommendation in order? Really, that is not what we are debating at all.

The Vice-Chairman: If your point of order, Mr Dietsch, relates to whether or not we should be going through specific recommendations of the task force, I will rule in your favour. However, your other comments really are not relevant to the point of order; they are in fact a point of view. "Disgust" is probably in the eye, or should I say in the mouth, of the member.

Mrs Marland: May I speak on a point of order?

The Vice-Chairman: Yes.

Mrs Marland: I think that if the member who raised the point of order were to read the motion, he would see that the motion says, "That this committee direct the clerk to invite the co-chairpeople of the Majesky-Minna task force to appear before this committee to clarify whether or not their recommendations appear in this bill and whether or not these provisions will make rehabilitation more effective in the Workers' Compensation Board."

Simply, what the member—

Mr Dietsch: With all due respect, it was read three times while you were out of the room.



Miss Martel: Well, you have not heard it yet, obviously.

1630

The Vice-Chairman: Order. Mrs Marland has the floor.

Mr Dietsch: It was read three times before you came into the room. I am perfectly capable of reading it and I have heard it before.

The Vice-Chairman: Mr Dietsch, Mrs Marland has the floor.

Mrs Marland: It may have been read a dozen times, but obviously you still have not heard it, Mr Dietsch.

Mr Dietsch: I heard it before you came in the room, several times.

The Vice-Chairman: Could members please direct their comments through the chair.

Mrs Marland: Mr Chairman, it is unfortunate that the member for St Catharines-Brock cannot understand what it is the member for Sudbury East is doing. She is simply, in support of her motion, stating why it is necessary to invite the co-chairpeople of the Majesky-Minna task force and she is clarifying whether or not their recommendations appear in this bill.

If you do not want to listen to that, that is fine, but there is a due process and that is simply all that is being observed at the moment while the member for Sudbury East speaks in support of her motion. I take exception to the point of order and I think it is out of order.

The Vice-Chairman: Mr Tatham, on the point of order?

Mr Tatham: No; sorry.

The Vice-Chairman: Okay. Are there any other comments on the point of order?

Mr Dietsch: I understood you to rule in favour—

The Vice-Chairman: I am ruling in favour of Mr Dietsch, that we should not be going through each section or even the most significant sections of the Majesky-Minna task force report at this point. That would be the task of the co-chairmen if the committee were we to vote to invite them.

Interjection: Mr Tatham has a—

Miss Martel: I can continue on.

The Vice-Chairman: Yes. Miss Martel still has the floor.

Miss Martel: Thank you, Mr Chairman. I will not challenge you. I think it would have been appropriate to take a look at the recommendations. I am sorry if Mr Dietsch finds it disgusting, but I think if the truth were told we would find out that most members have not read those recommendations. That is the problem we are facing today, because if they had, they would know that they do not appear in this bill.

If I can go back to what Mr McGuigan has said in terms of the ability of

the government to move legislation, I think the important point that has to be raised, and I thought he would have considered it, is that if the government has any intention of putting into place legislation that is meaningful, that is effective, that is going to make what is a terrible system at present function a little bit better, then it would have been smart to consult in particular with those people who had done the work in regard to rehabilitation.

I should remind members that the government of this province spent \$2 million having this task force travel around the province, a task force made up of representatives from the employer community, the labour community and the medical community who spent many long hours hearing from those groups most interested in rehabilitation and those groups most hard done by because of inadequate rehabilitation.

I would think that after many months of study, 84 recommendations and \$2 million, this government would have had enough sense to listen to what they had to say. In its "Final Statement," the task force said quite clearly that its "experience...in the past year was long, painful and emotionally wrenching. The tales of injustice, neglect and rejection recounted by the injured workers throughout the province were so harrowing as to leave the task force members disgusted and frustrated...."

"The WCB...failed to recognize the emergence of a society that is more understanding of the needs of the disabled. It has failed to become responsive to the fact that hundreds of thousands of workers have become partially or totally disabled in past years and that society cannot ignore or reject them."

It is a pretty powerful statement for them to make and was the reason behind their recommendations, which would have represented a significant overhaul of this system, not minor tinkering but a complete overhaul in delivery, in structure, even in the name of the organization, so that rehabilitation was no longer a poor second cousin to compensation.

But what the government chose to do was to ignore those. They do not appear in the particular provisions regarding rehabilitation. I think the people from Minna-Majesky have a right to come before us, tell us why they made those recommendations, what was the thrust behind those recommendations, why they put in place or described a whole new system and a whole new service delivery and why in fact it is imperative that this government, if it is going to try to put in place good legislation, should adopt those recommendations.

I think those particular people should come before us. They chaired that task force. They heard from all of the people. They know better than anyone else whether those recommendations appear in this particular report. I cannot for the life of me understand why the government members, if they have read the report and have nothing to hide, would be so reluctant to have those people come before us.

I would think that as a committee we have a great deal to learn from their experience and a great deal to learn from their knowledge of the system, and it could only be a benefit if we could find out exactly whether the recommendations are in place and, if not, what this committee should do to ensure that they find their way into this bill.

I am asking the Liberal members of this committee again to vote in favour of this. I think it is a good resolution and I think it is appropriate that these people, because they are so qualified in this regard in an area that makes up a significant portion of this bill, should come in here and tell

us exactly how it is and whether these recommendations appear or not.

The Vice-Chairman: Mr Tatham?

Mr Tatham: I withdraw my question.

The Vice-Chairman: Are you ready for the question?

Interjections.

The Vice-Chairman: Are you asking for 20 minutes, Miss Martel?

Miss Martel: Yes, I am.

The Vice-Chairman: All right.

The committee recessed at 1633.

1653

The committee divided on Miss Martel's motion, which was negatived on the following vote:

Ayes

Mackenzie, Marland, Martel.

Nays

Brown, Cooke D. R., Dietsch, Lipsett, McGuigan, Tatham.

Ayes 3; nays 6.

The Vice-Chairman: Are we ready to begin clause-by-clause?

Miss Martel: No.

The Vice-Chairman: Miss Martel, why?

Miss Martel: You just listen up and you will find out.

Interjection.

Miss Martel: Is that not appropriate?

Mr Dietsch: If I get any looser, I will fall on the table.

Miss Martel: Listen up, not loosen up. I do not want you to loosen up, Mike.

Before I move the motion, I do have to raise a point of order, Mr Chairman. Yesterday, when we started this, I mentioned that there were several outstanding issues that had not yet been resolved and that had come to me after rereading the reports that are presented to the committee, which I know all of you have reread as well. I said at that point that age distinction was one of the problems in regard to the commission. We have dealt with a second, which is rehabilitation.

I would like us, as a committee, to deal with a third, and that is the question of deeming. I do not think there is a doubt in anyone's mind that, in fact, it has been another very contentious provision. It has been a point that was raised again and again during the committee hearings. It is an issue where there is still a wide gap between what the minister says this bill will not do and what we heard from other people across the tour or through the course of the hearings say that in fact it does.

The minister has also said on many occasions that the system is modelled after that in Saskatchewan, a system that, as far as he is aware, no one has called for the removal or replacement of. Therefore, I think it is appropriate at this time, since my colleague and I could not have the Liberals vote with us to travel to that jurisdiction and see exactly how that system worked, to talk to all of the groups that were involved in that: workers, employers, the board, the ministry, etc.

I am going to move that the committee invite the appropriate representatives from all of those interest groups to this province, so that we can have some idea of what the effects are. The members of this committee will not have to hear from me about what the review committee said or from the minister about what he has said. We can actually have that group in front of us.

The Vice-Chairman: Miss Martel, do you have the motion?

Miss Martel: Yes, I do.

The Vice-Chairman: Could you place it?

Miss Martel: This is just a little preamble, Mr Chairman.

The Vice-Chairman: Do you have that in writing?

Miss Martel: Yes, I do. Let me just sign it.

The Vice-Chairman: Miss Martel moves that the committee direct the clerk to invite appropriate representatives of the Workers' Compensation Board, the Ministry of Labour, the trade union movement, the employers, injured workers and the review committee from Saskatchewan to brief the committee on the effects of deeming since its introduction in that province in 1979.

I rule the motion in order since, I understand, it is not the same as any previous motion that was placed before the committee.

1700

Mr Dietsch: I wonder whether I could ask a clarifying question, and then maybe the member could put it in her comments. Who are you suggesting pays for this visit by all these people?

Miss Martel: I would certainly think that this committee could look at that. You will recall that we went through this same type of discussion when we wanted the extension of the hearings. The Liberals at that point voted against that resolution on the pretext that we should not as a committee vote to move money or ask for money. If that is the pretext upon which you are going to vote against this one, I would be a little surprised, but go ahead. I do think this committee should pay for that if we want to get all the details



concerning the consequences of deeming in this province.

Mr Mackenzie: I might point out also that in a number of the committees that have sat in this Legislature, there is a long history of paying to have witnesses who have something to offer in the way of expertise.

The Vice-Chairman: I would like you to speak to the motion. Other questions related to cost and so on are not directly dealt with in the motion. So could you speak to the motion, Miss Martel?

Miss Martel: It is correct. This motion has not been moved before. The closest that we came, as members will recall, would have been during the course of the public hearings that were held in Toronto during the week of 20 March. At that point, it seems to me, 23 March was targeted as the day for injured workers and the day that the consultants or advocates could come on their behalf, and we would listen strictly to the Toronto-based groups in that regard.

You will recall that the injured workers' consultants, at great expense to themselves, I might point out, brought in an injured worker from Saskatchewan on that day who spoke to us at Convocation Hall. They also paid for the trips of the two representatives from Quebec in order that this committee might have the benefit of some of the groups who were affected by the changes in legislation and the introduction of the dual award system in their respective provinces and had dealt with it and understood the consequences of this.

At that point in time, members who were on the committee that day will recall that the Liberals did not give any reason but merely voted against the resolution that we had put forward to travel to those jurisdictions and hear at first hand from not only the injured workers' groups but all the groups as to how the system was working. Therefore, I am introducing another motion because I think it is vital that we hear from those groups if we are intent on putting a dual award system in place in this province that is comparable to the systems in those provinces.

Having said that, I do recall during several questions raised with the minister around the question of deeming that the minister pointed out on a number of occasions that the dual award system was first put in place in Saskatchewan in 1979. In one of his responses, he has also pointed out that he had talked personally with the Minister of Labour in that province and was assured by that Minister of Labour that what appeared in Bill 162 was superior to what appeared in the Saskatchewan legislation.

Not having contacted the Minister of Labour of Saskatchewan myself, I am not in a position to say whether that was said or not, and not having talked to anyone else and having only read the legislation, I am not in a position to actually say that is correct. Having read their legislation and taken a look at ours, I do not see much difference. Be that as it may, I certainly think that if the minister has already told members of this assembly—and he has during question period—that he has talked to people in Saskatchewan, then we as a committee should certainly have the benefit of that as well.

We should not restrict that solely to the Minister of Labour or a representative from the Ministry of Labour. I think if we are going to do adequate justice we should take a look at all those groups who are interested in this process and whom I have named in the resolution. I have particularly named the review committee in Saskatchewan.

Many of you will remember that when the Ontario Public Service Employees Union came before us in Fort Frances it devoted its entire presentation to the system of deeming in Saskatchewan, how it was used and what recommendations had been made by the 1982 and the 1986 review committees. They spent their entire time reporting to us what in fact were the consequences of that system, how the review committee had recognized that deeming was going on, how unjust it was and how the committee had recommended to the Workers' Compensation Board to make the changes doing away with deeming.

You will also recall that we heard basically the same thing from the president of the Union of Injured Workers in Saskatchewan who, having lived under that system, also told us that deeming had been used in a wide variety of cases as punishment. There was no protection and, indeed, even though the review committee in Saskatchewan had moved recommendations, the board had not taken those into consideration and had not changed in its discretionary way in any manner, shape or form to do away with deeming.

My concern, of course, is that we have heard from both sides of different groups in Saskatchewan; some, as the minister has pointed out, saying that the Ontario legislation has more protection; some, as the president of the Union of Injured Workers or the Ontario Public Service Employees Union pointed out about its colleagues in the provincial government sector, saying that in fact the system is extremely detrimental and that what we see in Ontario is no different from what was passed in Saskatchewan. We are heading down a very dangerous road if we, as a committee, are going to implement those kinds of recommendations here.

During question period in this House, we heard originally that deeming was not a feature of this bill. That was the minister's first response to some of the questions we raised early in October when we raised the cases in this House. That changed during the course of the hearings. In fact, when we as a committee came back to the House, the minister then said, "This ridiculous situation of deeming does go on, but we are putting in place some checks in order to counter that." The checks that he referred to in particular came from the amendments to the amendments to the amendments which were raised in this committee last week. Those of you who were here will remember that there was some weak-kneed instruction, or should I say weak-kneed direction to the board, to outline where "suitable and available" could be employed.

In fact, it does not do away with any of the other criteria that the board uses to deem, "the personal and vocational characteristics of the worker; the prospects for successful medical and vocational rehabilitation;" and any other "such factors as may be prescribed in the regulations" and so on. What we saw here last week was really weak-kneed and does not do away with the system of deeming at all.

My concern with deeming—and it should be a concern of all members in this House—is that in fact it is going on now at the board. We do not have to go very far to look at the types of decisions that have been rendered by this board since November 1987, when it changed its policy on supplements. Members will recall that in the last number of weeks we have raised several cases in the House where people who had only a pension went to the board and asked for a supplement to make up their wage loss and were told they could do all kinds of outrageous occupations that they had never held before, that they had never been trained to do and that never existed in the area in which they lived. In fact, they received nothing except the monthly pension to which they were entitled.

We had cases when we went through the committee hearings as well. I remember a particular case in Windsor and we had cases in Timmins. It went on and on and it is happening now. If the minister has said that we are going to check some of that and that the protections in this bill, as he has stated the Minister of Labour in Saskatchewan has said, are far better than the bill in Saskatchewan, then I think it is incumbent upon this committee to get it from the horse's mouth; but as I say, not only from the Minister of Labour, who is the only person the minister has had a discussion with as far as we know, but also from all of those groups which would have been affected since that situation has been in place, which is a decade. So I am putting that proposal forward.

I have not dealt with the money issue, although in the end it may be what the Liberals hang their hats on for voting against this. In any event, I think it is a good motion. I think this has been an extremely contentious part of the bill and we all have to recognize that. If we are going to ensure that that system is not put into place in this province—or does not continue, because it is already in place in this province—then we as legislators had better get it from the people who have dealt with it for the last decade, find out what we are looking at and how we can go about ensuring that it is not going to continue in this province or to just be given the rubber stamp under this particular bill.

1710

Mr Mackenzie: It is hard to rate the deeming provision or the debate we just had in terms of vocational rehabilitation earlier—the dual award system. Some of the shortcomings of this bill certainly bother people who are involved in any kind of Workers' Compensation Board work.

I cannot help but recall the incident in Windsor where I was asked to retract some rather unparliamentary words when I got a little bit angry with the member for the then riding of Haldimand-Norfolk (Mr Miller) at the time. He went after, in a very vigorous way, the young lady from Windsor whom my colleague referred to, who gave us one of the classic examples of deeming, and he said: "Why was she raising it? Didn't she understand this bill did away with that and corrected that?"

He obviously had not read the bill or did not know what the blazes he was talking about at that point. I think it was an unnecessary attack on that young woman, who makes one of the best cases you can make for deeming that is going on today. The minister has said, "We don't encourage it." In fact, we institutionalize it in this bill. That raises the question of credibility, as far as I am concerned.

Maybe we should have a couple of the cabinet ministers before us. I myself would like to hear from Mr Sweeney and Mr Wrye, because I know that when they met with the delegations from the Ontario Federation of Labour they both said very clearly they were assured that this bill did not create the problem of deeming; and that if that was part of the bill, then they were prepared to go back to cabinet to raise it because they had been assured that was not in fact what the case was or what happened.

That is what my OFL buddies tell me their comments were when they were talking to them. I would like to know if that is accurate. I suspect it may have been, because I suspect both of these gentlemen would not be happy with a bill that really institutionalizes deeming. Deeming is one of the sicker provisions in this legislation.



I think it is worse because we are discussing whether or not we should have the provinces where this has been in place make presentations to this committee. Incidentally, we were told one thing by the minister in terms of Saskatchewan's position; we certainly got a different view from the workers' representative from Saskatchewan who did come before this committee and, once again, it certainly did not agree with the arguments that were being made by the minister.

When you take a look at the case of Mrs Desjardin of Windsor, what more clearly underlines exactly what is happening? She was trying to get by on a pension of \$140.22 a month, because the Workers' Compensation Board has decided that she could be employed as a bookkeeper even though she had not been able to get work. She was one of the many injured workers. She injured her hand at Dainty Foods lifting 50-pound bags of rice. Based on the WCB's meat chart, she was given a 14 per cent pension of \$140.22 a month.

A vocational test determined that she was good at figures and could become a bookkeeper. However, the WCB has not provided her with any training, and without the necessary education or experience she has not been able to find work as a bookkeeper.

The WCB also said that she could be working in the field as a bookkeeper where the wage, according to the board, was \$337.60 a week, which was considerably more than she was earning prior to her accident. "So," the board says, "hypothetically, there is no wage loss." Therefore there is no wage loss, despite the fact that there is a significant loss of pay—in fact, the difference between earning a living wage and poverty. That is why she is denied a supplement.

Is there any wonder? We can give you dozens of cases. My colleague in the House has raised a number of them. Here was a case where the facts and the proof were actually there, and yet we had members serving on that committee saying, "Hey, this bill is going to correct that situation." It clearly does not correct that situation; it clearly institutionalizes the issue of deeming. I think if you are not going to have a clear answer as to what the experience is in the provinces—in Saskatchewan, in particular—then we are once again going into a bill without knowing what the blazes we are talking about in terms of what can happen and whether or not deeming is a provision of this particular bill.

It was in the previous motion as well, considering the importance of rehabilitation, but it is inconceivable to me that we would not talk to the people who have a bill. Supposedly, our bill is even better in terms of this provision. It just does not make sense, and I would urge the committee for once to consider hearing from somebody who might tell us who is telling the truth in terms of this particular argument.

Mr D. R. Cooke: I just want to clarify something Mr. Mackenzie said, because I was present at the meeting with Mr Sweeney, the Ontario Federation of Labour representatives and the Kitchener-Waterloo and District Labour Council representatives. That meeting took place prior to the minister's new proposals of amendments to Bill 162, so it was based on Bill 162 as it existed at the end of second reading.

My recollection is quite clear that Mr Sweeney's concern was expressed as to whether or not the matter of deeming was sufficiently looked after as the bill existed at the end of second reading. I have not heard Mr Sweeney express any view with regard to the new amendments, and I think that should be made clear.



Mr Mackenzie: It would be interesting to know how he thinks it is taken care of, because nobody else to whom I have talked does.

Mr D. R. Cooke: You did not talk to me.

Mr Mackenzie: It is obvious that the members who are sitting here know what the case is, whether they know it or not.

Mrs Marland: Perhaps you could clarify something for me, Mr Chairman. Yesterday, when we were discussing why we would consider a motion to invite other people back before this committee, it was suggested by the person who sometimes acts as whip for the government members on this committee that there had originally been a subcommittee of this committee established to determine where the public hearings would be held and who would be invited to those public hearings. I think at the time he said he was using that as an argument as to why we should not invite more people.

I wonder if you could clarify for me whether, when a committee establishes a schedule for public hearings on any matter and determines what groups will be included in a mailing, that precludes that committee from at any time deciding it would like to have the benefit of more resources and input into the committee's deliberations.

The Vice-Chairman: No. The committee can order its own business. If the committee members decide that it would be useful to have input from other groups that have not yet been heard, or for that matter to recall some of those that had been heard, the committee can do that.

Mrs Marland: That is my understanding also.

The importance of this motion speaks for itself. It certainly stands on its own, but since I can anticipate from previous comments of the government members on this committee that they have difficulty understanding what deeming is, they have difficulty in understanding that deeming is going on today, in spite of the fact that the legislation has not been passed.

Mr D. R. Cooke: Who has difficulty? Name one.

Mrs Marland: With respect, Mr Cooke, you have not been on the committee; I respect the fact you are not a regular member of the committee. But there have been questions raised by the government members on this committee during our travels around the province in conducting public hearings which definitely would indicate that there are Liberal members on this committee who do not understand what deeming is and even those who do understand it do not understand that deeming is going on today. If there is any doubt about that, I would ask your researchers to research the Hansard from all the—unfortunately, I guess we do not have Hansard when we are on the road. That is unfortunate. I have just remembered that.

1720

Miss Martel: Did we not have Hansard when we were in Windsor, when the case of Mrs Desjardin came up?

The Vice-Chairman: No.

Miss Martel: Well, some of those people remember what the Liberals said.

Mr D. R. Cooke: I would think you would want to get on with the voting while the member for Norfolk (Mr Miller) is not here.

Miss Martel: I would like him to come back in and talk about why he thinks it is good.

The Vice-Chairman: He cannot today; it is too late.

Miss Martel: Bring him in on Monday.

Mrs Marland: I think it is unfortunate that—

Mr Dietsch: I remember the disgusting display from their colleagues in Windsor. I remember that.

Mrs Marland: We are dealing with something that I would have hoped the Liberal government members would have cared about.

Interjection.

The Vice-Chairman: Order, please.

Mr. Dietsch: Usually.

The Vice-Chairman: Please, if you have comments to make, indicate to the chair that you wish to participate in the debate. Mrs Marland has the floor.

Mrs Marland: I will repeat what I said. I would have hoped that the Liberal government members on this committee would have wanted to have explored every possibility that is related to this bill. I would have hoped that they would have wanted to remedy the atrocious situation that exists today in workers' compensation, both for the employer and the injured workers, and therefore the employees.

It would seem, because of the questions that have been generated by the government members of this committee—as well as others, but even by their questions alone—that they too could benefit from hearing the facts about the situation in Saskatchewan. If they think that deeming is okay and if they are fully satisfied in a vacuum of information, then that is up to them; but this motion in fact gives them an opportunity to hear from not just injured workers or any group that could be perceived as being biased on this subject but in fact the Ministry of Labour, the trade union movement, employers and, most important of all, the review committee. This is a review committee that would be established in Saskatchewan the same as any review committee in any province.

Of course, we recognize that the committee has already decided it does not want to hear from the Minna-Majesky task force, which in fact is a review committee of sorts, on the existing problems with workers' compensation in the province. They have made that decision. But since the review committee of 1982 and 1986 in Saskatchewan has reviewed the consequences of deeming to injured workers in that province, and since we have a perfect example of a resource where a dual award system is in effect, it is a bit like saying: "No, I don't want to hear any more. This Bill 162 is fabulous. I'm going to go ahead with it. I'm going to support it with my blinkers on. I don't want to learn any more. I don't want to listen any more."

For every single member of this committee who chooses not to listen any more at this point, when we are about to go into the bill clause by clause, I am sorry, they are not representing the people who elect them. The people who elect you to serve their interests in this Legislature expect you to listen to the best of your ability and to the greatest capacity that you have.

Do you know what I can compare this to? It is ironical. I will compare it to the fact that we had a very real example in England about what a nationalized health care system could become; and where you have examples that exist and you start into a new policy and new legislation when there is an example elsewhere from which you can benefit and you choose not to hear or learn from that example, then frankly I think the job of members is not being done.

I feel that this motion is simply saying, "Let us hear from those people who have experienced the same process in another province." If you have difficulty with the motion, you might wish to amend it, even to hear only from the review committee. If you are worried about having to spend maybe an extra day learning about this situation in Saskatchewan—maybe you begrudge that time—before you run headlong into Bill 162 and what it going to not do, that is, be a remedy in Ontario—and maybe you are concerned about expense, although goodness knows this Liberal government wastes enough money on everything else, I do not think that you should worry about expense when you are looking at the future of workers' compensation in this province.

However, if those are your problems, if time is a problem for you and expense is a problem for you, simply amend the motion to read that this committee would hear from the review committee from Saskatchewan, because deeming has to be the most absurd part of this bill. When I have talked to people about deeming and what it means and what it represents to injured workers and employers alike, they cannot believe that in 1989 any Legislature would be looking at a piece of legislation that contains something that was so impractical, so unrealistic and, most important of all, so unjust.

Miss Martel: I think it is probably appropriate to deal in a bit of a way with what we heard during the course of the hearings, because that should bring home to all of us how absolutely important it is that we actually bring in some of these people. We were fortunate enough that the Toronto injured workers' consultants group put out a great deal of money to bring in the president of the Union of Injured Workers so we could hear from his perspective.

Based on what he has to say compared to what we have heard the minister say about this particular section of the bill, I think it is incumbent upon us to invite all the groups in and to hear directly from not just a select group but all of those who have a stake in that system and can tell us in hindsight, after 10 years of having that legislation in place, exactly what it has meant to them and how in fact we can avoid all of the problems that we heard, albeit only from one representative, that deeming has resulted in in Saskatchewan.

I go back to the brief that was given to us from OPSEU. I should point out again that it spent a great deal of time, and money as well, contacting people in Saskatchewan because there were so many requests made from members of this committee, in particular the member for Oxford (Mr Tatham) who asked quite frequently, as members of the committee will know, how the situation in Saskatchewan worked.

OPSEU then took it upon itself to devote its entire presentation



strictly to the Saskatchewan system in order to respond to some of those concerns and point out to the committee just where the garden path was leading and why in fact we should avoid going down that route, and furthermore why we should move as quickly as possible to end the deeming that is going on at the Workers' Compensation Board at present.

The group that put the OPSEU brief together was very good in talking to some of the people who had been involved in putting together the original bill. At that time they did talk with John Boyd, who is a researcher with the Saskatchewan Ministry of Human Resources, Labour and Employment. OPSEU pointed out that in 1986 he was the research officer who was assigned to the review committee that was again looking at the Workers' Compensation Act, and deeming in particular, in its four-year review.

He said that the 1980 review committee, even four years before, should have taken it upon itself to set out very rigid guidelines to define the deeming process. He went back to the original intent of the legislation, which was quite different, wherein deeming was only intended to be used very sparingly; less than one case in 10, perhaps less than one case in 100.

#### 1730

After the 1982 committee looked at the bill and reviewed it, it tried to deal with the problem of deeming. The committee tried to grapple with the problem of defining "suitable" but could not come to any consensus on how to define "suitable" in order to limit the discretion of the board in the deeming process.

It was interesting that the review committee at that time said, "We can only trust that the administrators of the act will use this with intelligence and discretion." Of course, they were talking about the Workers' Compensation Board. In retrospect, they must wonder why they ever trusted that the board could use that with intelligence and discretion. The board in Ontario has not used it with intelligence and discretion and it certainly is not different in any other province that has implemented this system.

In fact, when the 1982 committee looked at the system again and reviewed it four years later, they said: "The responsibility of the board is to replace any income loss which occurs as a result of the injury. Only when it can be demonstratively justified that the income loss is not due to the injury, can deeming be seen as a reasonable proxy for income loss."

That was not what was happening in Saskatchewan at the time. It is not what happens in Ontario now. That particular review committee said that it was high time that the board return to the original intent of the legislation, which was to guarantee full compensation for wage loss.

If I can just go back to the points that came up during the course of the review committee's debate on this issue in 1986, they found many cases and documented cases which showed how workers were being deemed in a number of ways. They said that workers were being deemed by the board to be capable of engaging in work for which they were not qualified without first being given appropriate training.

Those of you who were in Windsor will remember that that was the case of Mrs Desjardin. She was not a bookkeeper; she had never been a bookkeeper. She had worked at Dainty Foods Ltd, lifting bags of rice. The board said she was good at figures and would probably make a good bookkeeper, but the board was



not willing to retrain her. In fact, the board said to her: "You will get nothing. We think you can be a bookkeeper and make more money, but we're not going to retrain you. Go see welfare." That is exactly what has happened in Saskatchewan.

Second, they pointed out that workers are being deemed by the board to be capable of obtaining employment at rates of pay that are unrealistic, having regard to the going rates for the jobs in question. We have a case in my riding. A gentleman who was a miner was told he could be a salesman. He has never been a salesman in his life; he has only worked underground all of his life; he went from high school right underground.

Not only had he never worked as a salesperson in any capacity, but the rate of pay that the board in Sudbury attached to that particular job was far higher than a salesman going new into that profession, if I can use the word, would ever have made. In fact, the amount of money they designated he should be paid was quite inappropriate, had nothing to do with and did not in any way, shape or form reflect the economic situation in Sudbury. It was completely inappropriate and completely ridiculous.

Third, they said that workers are being deemed by the board to be capable of obtaining work in fields of employment in which job opportunities simply do not exist. We have had another case, this time in Toronto, where the woman, who is an Italian woman, was told she could be a picture-frame assembler. The woman actually went out on the advice of her case worker for six months and tried to find that employment.

Mr Dietsch: On a point of order, Mr Chairman: With all due respect, I understand what the member is saying and I understand the motion that is before the committee. I do not think it is necessary that we go into a case-by-case description of some of the things that have happened. I do not understand why the presentation of all these other cases finds relevance to the motion.

We were at the hearings, as was the member, and I recall some of the discussions of presentations that were made before the committee in addition to what the member is saying. For expediency's sake, I do not think it is necessary.

Mr Mackenzie: You do not have complete control over the rules yet, Mike. People can still argue in support of the motions.

The Vice-Chairman: Order.

Mr Dietsch: And delay and obstruct and any of the other things, Bob.

Miss Martel: You sound like Conway.

The Vice-Chairman: Order, please. Are there any other comments on Mr Dietsch's point of order?

I will rule that Miss Martel has the right to put forward her reasons for moving this motion. If she is making arguments as to what is in the situation in Saskatchewan, she can proceed. But please be careful to ensure that the debate is in fact on the question of whether or not to invite representatives from various groups in Saskatchewan.

Miss Martel: I think it is most certainly in order. We have been

told on the one hand that the Saskatchewan system is working well. We were assured that the Minister of Labour of this province had talked to the Minister of Labour of that province and we were told that there were greater protections in this. What I am pointing out is the tremendous problems they have had in that province which I do not think we should in any way, shape or form try to incorporate or import into this province. Once we try to halt that, we should also end the deeming that is going on now, which should have been done long ago by this minister.

In any event, the final analysis of the review committee—which I should point out is not made up of members of the Legislature; it is made up of representatives from the employer group and the trade union movement, equal representation, and the chairman is a judge. They do not have any particular political axe to grind or a political bias to assume and certainly would have looked at it with the blinders off and as clearly as they could, to see what the problems were and what recommendations should be made to change what is obviously an unfair and unjust system.

Their end position was that the board was wrongfully cutting off people, reducing them in some cases or cutting them off completely, and the legislation which had been passed by the New Democratic Party in 1979 was being completely undone by the board. The intent and the spirit of the legislators in passing that had not been to use deeming in every case as a simple way of cutting people off benefits but was only to be used in the case where the worker did not accept the employment that was offered to him or chose to take himself right out of the workplace.

I think it is important that you look at the review committee to determine exactly that, whatever has been said in this House, it is certainly not correct to say that the system is working well. We have seen that there are many problems. I think it incumbent that if we do not want to invite everyone else, I for one would certainly accept only that group coming. But I certainly would like to see everyone else.

I think there is another person whom I should quote, because OPSEU also talked about this gentleman, Bob Sass. He was the Deputy Minister of Labour and he himself helped to develop the 1979 act and the dual award system that is in place in that act. As reported by the OPSEU people, because they took the time to call him and talk to him and bring that information to us, he said quite clearly, "If I had my druthers now, I wouldn't tout the Saskatchewan system as an advance."

He also said to OPSEU: "Compensation for wage loss alone is in itself unfair." He again reiterated what the problem had been in Saskatchewan, that being that while the original intent was to use deeming in one case out of 10 or one case out of 100, as Mr Boyd the researcher had said, in fact the board was using deeming on a consistent basis in an effort to reduce benefits to workers or to disallow benefits completely.

He said, "The act does not provide proper compensation for individuals whose claims are recognized." He thinks the act does not recognize as many claims as it should. If he were starting again, he would develop an entirely different system from the one in place in Saskatchewan.

1740

It seems to me we have a fundamental difference of opinion between the people who put the system in place and now live under it and have the opportunity to review it, and those of us in Ontario who, without the benefit of having these people before us, have said that perhaps things are not all that bad or that we have more protections than they have.

Based upon the information that the Ontario Public Service Employees Union has provided us, and based upon some of the information that was given to the committee by the legal clinics in terms of what the review committee had said in Saskatchewan, certainly even on those bases alone we should take a look at having these people before us.

The other thing I am concerned about—it was a point raised by Mr Cooke and I am sorry he is not here any more—is that in light of the amendments to the amendments to the amendments introduced here two weeks ago, perhaps Mr Sweeney's opinion of this bill or Mr Sweeney's concern with deeming had somehow been removed. He went on to suggest that his concerns with deeming had been removed. I am not sure how well he has taken to looking at the new amendments to the amendments to the amendments, because for the life of me I certainly cannot see how we have provided any more protection to workers, or how we have in any way, shape or form limited the deeming process that goes on at the board now.

I point out to members that the only change that was made from the old amendments to the new was in the regulations section where we are now, as a group, supposed to give some direction to the board as it defines the words "suitable" and "available." In this case, it appears in the bill that in defining what determines "suitable and available employment" for a worker, the board will have regard to the following criteria:

"(a) the fitness of the worker to perform the work;

"(b) the health and safety consequences to the worker in working in the environment in which the work is performed in light of the impairment;

"(c) the existence and location of potential employment opportunities for the worker in the labour market in which the worker is expected to be employed; and

"(d) the likelihood of the worker securing employment."

Having gone through the amendments to the amendments to the amendments very carefully, my concern is that we have not moved an iota in trying to reduce the deeming powers of the board. In fact, all we have done is give some direction, weak-kneed at best, as to how the board is to define what is "suitable and available employment."

I think members of the committee should again take a serious look at all of the criteria that are used for "suitable" and "available." Those, of course, continue to appear in the bill. They have not been done away with and they were as onerous then as they are now. I think they should be repeated for the benefit of the members who are here. For example, the board will also have regard to—



The Vice-Chairman: Miss Martel, could I ask you to wrap up your comments, if possible? I am not trying to close off debate, but if you can be brief the committee would appreciate it.

Miss Martel: Well, Mr Chairman—

Interjection.

The Vice-Chairman: Order. I am not suggesting that anything is not in order. I was just asking if it might be possible to be brief.

Miss Martel: I will try. Based on what we heard during the course of the hearings, and we heard many cases of people who had been unfairly deemed under the present system, that should have been done away with a long time ago. It has not been, but certainly if we compare that to what appears in this bill—members will recall that many, many groups that came before us stated emphatically what this bill did was just put the rubber stamp on the present policy and give the board the legislative power to continue on with deeming, which it does not now have.

Based upon that particular issue alone, I think it is imperative that we deal with the people from Saskatchewan, and all of the groups that have an interest in the system. If we can get only the legislative committee, I will deal with that, but I certainly think we should hear from all the groups that I have named in the motion, so that we can find out exactly how that system works, so that we do not get it at second hand via the minister of labour of that province or from looking at the brief that the Ontario Public Service Employees Union gave us, which some people would say is biased; some people may even say the review committee's assessment is biased. If that is the case, why do we not bring those groups in and get it straight from them? They would have had 10 years to deal with the system now.

The review committee itself on two occasions has made recommendations to the board on how to clean up its act. Mind you, the board has not responded, which does not surprise me, but they certainly have looked clearly at it without any political bias and have made recommendations for major changes in the way the system is being handled, which in fact is far, far different from what any legislator thought would happen in 1979 when the bill was passed.

I certainly think we are heading down the wrong garden path if we continue on with this. We have a group in place that has dealt with this for 10 years. It has vast experience on how it has worked. We should have that group here to brief us on what has happened there and how to avoid that continuing in Ontario in the future.

I hope the Liberal members of the committee will support it. There may be some discussion about finances, but as was pointed out by my colleague, a number of other expert witnesses, in various committees, have been called in and that has been paid for by the committee. I certainly think those people could give a valuable outlook to this committee on how to deal with this very difficult question, which in my opinion still remains in this bill.

The Vice-Chairman: Is there any other member who wishes to speak to this motion?

Mr Dietsch: I think the only thing I would say is to reiterate the words of the leader of the official opposition in his comments to the committee, "We intend to fight it using every legal parliamentary means at our



command and that is precisely what we are going to do." This is just another glowing example of another day of participation, when we are very much interested in getting to the clause-by-clause aspect. The points that are raised by the member are points of view that I am sure will be thoroughly discussed when we go into the clause-by-clause aspect. It is somewhat disconcerting. The minister is here to put forward views during the clause-by-clause debate. It is a tremendous waste of very valuable time. It is unfortunate.

Miss Martel: I assume I will have an opportunity to respond to that, Mr Chairman. It is unfortunate that Mr Dietsch does not like the democratic process. That is not really my problem. He and the government House leader are starting to sound very similar. I do not know whether you are taking lessons from him, but certainly it sounds like that today.

The Vice-Chairman: Order.

Mr D. R. Cooke: Question.

The Vice-Chairman: The question has been called. Are you ready for the question?

Miss Martel: No.

The Vice-Chairman: Are you asking for time? How long?

Mr Dietsch: Can we take the vote at six o'clock, Mr Chairman?

Miss Martel: How long do we have?

The Vice-Chairman: You have up to 20 minutes, if you request it.

Miss Martel: I will take the 20 minutes.

The Vice-Chairman: The vote then will be on Monday.

Mr Dietsch: Do we have unanimous consent to take the vote at six o'clock?

Miss Martel: You will not get it from me.

The Vice-Chairman: Is there unanimous consent to have the vote at 6 pm?

Miss Martel: No.

The Vice-Chairman: There is not unanimous consent.

Mr D. R. Cooke: I have a motion that I would like heard and perhaps it could be dealt with between now and six.

The Vice-Chairman: I do not think you can put a motion on the floor when there already is one on the floor.

Mr D. R. Cooke: Perhaps the motion that is on the floor could be stood down with the vote to be held at another time, which the chair has

already indicated, and this motion could be dealt with in the intervening time we have available.

Mrs Marland: On a point of order, Mr Chairman: Are we not in the 20 minutes now?

The Vice-Chairman: I was just about to rule that we were. To be fair, I just do not think we can have another motion put on the floor when we are already considering one.

Mrs Marland: Did you not call the question?

The Vice-Chairman: The question was called. Yes.

Mrs Marland: Yes, and we are in the 20-minute period.

Mr D. R. Cooke: No. The 20-minute period was abandoned, as I understand it.

The Vice-Chairman: No. There was a request for unanimous consent to abandon the 20-minute period and that was denied, so we will hold the vote on this motion by Miss Martel on Monday next 10 minutes after the calling for routine proceedings.

Interjection.

The Vice-Chairman: The clerk has clarified that the first order of business the next day then, immediately on the committee coming to order, will be the vote on the motion.

Mr D. R. Cooke: Mr Chairman, it is my understanding that if the 20 minutes is sought, the 20 minutes can be sought now and we will continue to sit until 6:10 p.m and the vote could be taken at that time.

The Vice-Chairman: There has to be unanimous consent in order to sit beyond six. I will ask at this time then, if you wish. That was not exactly what was asked before. Is there unanimous consent that we sit beyond six and hold the vote at 6:10 p.m.?

Mrs Marland: I am declining. I just point out there is going to be a vote in the House and that is why I am declining.

Mr D. R. Cooke: There does not have to be unanimous consent. That is my understanding.

The Vice-Chairman: The clerk has advised me that there must be unanimous consent to sit beyond six, and that is my understanding.

Mr D. R. Cooke: These rules should be reformed, Mr Chairman.

Mrs Marland: Yes. So you can have control, eh, David?

The Vice-Chairman: We are adjourned until Monday.

The committee adjourned at 1750.



CARON  
XC13  
-578

R-5

STANDING COMMITTEE ON RESOURCES DEVELOPMENT  
WORKERS' COMPENSATION AMENDMENT ACT, 1989  
MONDAY, 12 JUNE 1989





Mrs Marland: The reason I thought it was different was because---

The Chairman: Go ahead.

Mrs Marland: I am listening to the clerk.

The Chairman: Do not listen to the clerk, he will get you into trouble.

Mrs Marland: When the motion that was just defeated was placed on Thursday, there was some concern expressed by the committee that it might be expensive to bring a lot of people down. That was referred to by more than one person. I thought some members of the review committee could come and bring their reports from 1982 and 1986. In fact, they are not referred to in the previous motion; it is a different motion. I am not asking that all of those different people come. I am just asking that the review committee come. The intent, with respect, is different than the intent of the motion that included all those other people.

The Chairman: I am going to stick to the ruling. The reason I ruled it out of order is that that group is already included in Miss Martel's motion, which was defeated, so it would be repetitive.

Mr Wildman: On a point of order, Mr. Chairman: I guess I am asking for information. As I understand it, from having heard it read by Mrs Marland, the intent of this motion is to avoid the expense and the time involved in inviting all of the groups that were mentioned in Miss Martel's motion and rather to limit it to one group. For that reason is it not different?

The Chairman: I do not think it is different enough. I am not basing my decision on the fact that it has simply reworded the motion that was put forward by Miss Martel. That is not the only reason I am making the ruling that way.

Miss Martel: It is not my writing.

The Chairman: Well, the ruling has been made and you should not debate the ruling. If someone wants to----

Mr Wildman: I was not---

The Chairman: Yes, I understand that. Is there any other order of business before we begin clause 1 of Bill 162?

Miss Martel: I do not know if she is going to challenge that. It would seem not.

I am sorry that Mr Cooke is not here because I was going to leave the floor to him. He had a very important motion on Thursday that he wanted to get on; he wanted me to stand down my motion. I sorry that he is not here today to deal with it.

However, given that he is not, I do have another motion that I want to put before the committee and speak to as well. I am sorry that Mr McDonald is not here either because this would probably interest him. I would like it read it into the record and then I would like to speak to it.

The Chairman: Miss Martel moves that this committee direct the clerk

to invite appropriate representatives from the Workers' Compensation Board to reappear before the standing committee on resources development to answer questions arising out of the public hearings regarding this bill.

They have not been invited before, in one of your previous motions, as I understand it. I was not here Thursday. Do you wish to speak to your motion, Miss Martel?

Miss Martel: Yes, I do. I would like to have the board before us again for a couple of specific reasons which I would like to go through with the committee. There are at least six areas in the bill where I have some concerns, where they were not addressed when the bill was before us. In my opinion, some of those concerns were reinforced during the course of the hearings when we had different presenters before us and also made some of the same points.

1550

I note in going through the Hansard the day the board was before us, 16 February, that there were other members of the committee, in particular, Mr Dietsch, who also indicated at the end of the day that they had further questions and asked at that time if it would be appropriate to have the board before us again. For those committee members who have their Hansard with them, I refer you to page R-40 on that day where Mr Dietsch asked if the board could in fact come back to answer further questions on this bill.

I take that as an indication that the Liberals would not be averse to having some of the people from the board back before us. Indeed, even the same people who were here that day could come back and answer some further questions. I would like to deal with the areas of concern I have and why I feel that it is important that the board come back to clarify, reclarify or outline some of its intentions with regard to this bill.

First of all, I am concerned with the future loss-of-earnings provision in this bill, that is, the section under the dual award system whereby the board has the power to determine what a worker's loss of earnings would be. Now we all know that is deeming. We have talked about that and there was a motion to that effect last week.

However, I was concerned about a statement that was made by Mr Wolfson when he came before us when he outlined how the board would in fact go about determining what a worker's future loss of earnings would be. If I can just quote the section, he says:

"After 12 months of continuous temporary benefits or where maximum medical rehabilitation has been established, whichever comes sooner, the adjudicator will have to estimate the future loss-of-earnings capacity. This will be done by an interview with the worker and with the assistance of some economic loss analysis that will relate labour market prognosis for workers in general with various kinds of characteristics."

That was the only indication he gave as to how the board would actually proceed with what we call deeming. Based on that, I wrote to the chairman on 19 May. I outlined that section to him again and I said:

"I would be interested in knowing what the board has in mind in this regard and what exactly an economic loss analysis is. I would anticipate that some thought has already been given to this, especially since Mr Henry McDonald has already been named director of implementation of Bill 162."

The response that I got back from the chairman this morning was:

"Thank you for your letter of 19 May regarding Bill 162 economic loss analysis. I have requested that Mr Henry McDonald, executive director, client services, review your concerns and advise you of his findings. Mr McDonald will keep me informed of his progress in responding to your concerns."

I do not feel that is good enough and I have no idea when Mr McDonald will get back to me or if indeed Mr McDonald will get back to me. I would think that on the issue of deeming, which we have seen during the course of the hearings is an important one, we as members should have every idea as to what the board actually has in mind in carrying out that process. I am not convinced that I will get an adequate response from Mr McDonald.

I think members of this committee would like to have a better sense of what the board has in mind when it is actually deeming people than the very, shall I say, flimsy explanation that we have been given by the board to date. That is one of the first reasons why I would like the board back before us to deal in particular with the concerns that I have over the future loss of earnings.

Second, I am concerned about the whole section on vocational rehabilitation. Again, some of that concern has been addressed in resolutions placed before this committee. My concern comes from the fact that at present the board already has put into place, beginning 1 January 1989, a new system of vocational rehabilitation and changes in how vocational rehabilitation is delivered.

During the course of his time in here, Mr Wolfson actually said, in terms of vocational rehabilitation, that they "have...developed a new vocational rehabilitation strategy to provide early intervention and accessible and intensive services." He goes on and points out that: "We plan on increasing our in-house resources by about 50 per cent. Our total expenditures on an annual basis will be up by \$26 million to around \$46 million a year."

My concern, and it was a concern that was raised during the course of the hearings, is that much of that increase will in fact not find its way into new rehabilitation services for injured workers, but the majority is going to find its way (a) into administration and (b) into vocational assessments.

My concern with the money flowing into assessments is that the assessments are going to be used, as we have seen with a number of deeming cases, to find out those characteristics that workers have, to attach those characteristics to some kind of phantom jobs and to cut them off in the process.

We were given some statistics from a couple of groups that came before us who outlined their same concerns and also gave an actual dollar value of the amount of money that was going to go into services. It was far less than the amount of money that was to go into either administration or into actual rehabilitation services.

Since I would think the board would have some idea of where this funding is going, I would certainly like the board to come before us and outline to us exactly into what programs or administration or assessments or how that dollar figure is going to be broken down, because I believe that in the end most of that money will not find its way into increased services at all.



In line with other problems with vocational rehabilitation, many of the members will know that the new system was set in place in January 1989 and what in fact happened is that where rehabilitation appears in the present act, that is, under section 54, that section has now gone under section 40 in the act. Maintenance benefits that before were for rehabilitation purposes are now being paid out of section 40 under the present act.

Because the bill still uses section 54 in the provisions of the section on rehabilitation, I am wondering how the board is now going to work backwards and put section 54 back into the bill. Beginning 1 January, their policy was to take it out and maintenance benefits are being awarded by claims adjudicators and not by rehabilitation counsellors, so I would like to know what the board intends to do or how it intends to backtrack, or if section 54 as written will be the actual section 54 in the bill after it is passed or if it is going to disappear again under section 40. That concern has not been responded to either.

I am also concerned in that regard that presently, under the new policy established in January, the length of service that a worker can receive is tied to pension supplements: that is, a worker can receive benefits for the same amount of time that he receives a pension supplement. Under the new pension supplements policy put in place in November 1987, the maximum amount of time you can receive the supplement is 18 months, so that, as of 1 January, the length of service for rehabilitation is limited to 18 months. That is after you get on to rehabilitation services.

I would like to hear from the board what it now intends to tie the length of service to, because under the new bill the pension supplements policy changes and the whole section on pensions changes. I would like to have some indication from them as to what they now intend to tie rehabilitation to the length of rehabilitation to, because they certainly have done it as of January. I would like to see what they have in mind if and when this bill passes.

Third, I am concerned with the present pensions that people have been awarded. Those of you who were here when the board came before us will remember that Mr Dietsch raised a question as to whether or not people who were on pensions now were in fact going to have their pensions taken away. Mr Wolfson at the time said that there were about 126,000 people who were on pensions and they would continue to receive their pensions. He said:

"That is correct, all of them, in fact, will get an inflationary increase because that is built into the statute. Over and above inflation, many of them will get a supplementary increase to the tune of about \$700-million worth."

Mr Dietsch then said: "They will not lose any pension. They will go through an increase in pension as well?" Mr Wolfson said, "Yes, exactly," and Mr Sorbara went on to say: "The pensions continue just as they are. If they are fixed, they continue to operate under the current law."

The problem I have with that assumption or the statement by the board that anyone who has a pension now will not lose it is a case I was given of a nurse in Welland who had a 15 per cent pension fixed by the board, a pension which she received some two years ago and has been receiving on a monthly basis since then. Her doctor told her that her condition had deteriorated so she requested a reassessment by the WCB. She went in to be reassessed in September 1988 and in fact the 15 per cent fixed pension that she had been receiving for two years was completely taken away.



1600

If I recall correctly, we also had a gentleman who came before the hearings in Toronto when we were at Convocation Hall, a gentleman who sat on the right-hand side and also stated that he had gone for reassessment and his pension had been taken away. I would like to ask the board how it can justify its statement before this committee, the standing committee on resources development, that is, that any pension that has been fixed will not be done away with under this bill, when we are seeing people who are going now to have their pensions reassessed and are having their pensions reduced or taken away.

Second, in that regard we also had another group that came before us and talked about the fact that people were having their pensions reassessed or going in to be reassessed and the board, instead of increasing the fixed pension they already had, was now granting provisional pensions and is going to bring in people a year or so from now to reassess them again. My concern with that, of course, is that the board is anticipating the passage of this bill.

Instead of increasing people's pensions as they should, those people who already have a pension are being reassessed because their condition is worse, and instead of increasing that pension from 20 to 30 per cent and continuing on, the board is saying: "The 10 per cent increase is provisional. Come in here again next year and we will judge you under the new dual award system under Bill 162."

I suppose that I find it completely unacceptable that that is the route the board has now taken. With fixed pensions, the board has no right to make that provisional when it is granting an increase. They should be added on on top of the percentage that the worker already has. We did have a case that I think the Canadian Union of Public Employees told us about, where the injured worker had a 20 per cent pension. He was reassessed to 30 per cent but that 30 per cent was now a provisional award and he would be hauled in a year from now to be looked at again.

I would like to ask the board where it gets off implementing this type of policy of which the only purpose is to have these people brought in again a year from now in order to deem and how it actually gets off putting this in place before this bill has even been passed. I think it is an unfair situation. I certainly think the board has to be challenged on its right to continue in this manner. I do not know how many other workers are in a similar position, but certainly we had the case of two and they should be looked into.

Next, I have concerns, and I think many of us recall those concerns that people had, about the time limits that were inherent in this particular bill during the course of the hearings. I just would like to go through a couple of those. We had many people who were concerned with the time limits of 12 to 18 months before workers who had been injured and on temporary benefits would in fact be brought in to be assessed for pensions under the dual award system.

Many groups who came before us said that workers suffering from a serious injury would not have achieved maximum medical rehabilitation after 18 months. It was completely unfair of the board to try to judge after 18 months what that recovery would be and to base their pension, their future loss-of-earnings benefits and their noneconomic loss on workers who had not achieved that maximum recovery yet.

We had a number of people who said the limitation on reinstatement was

completely unfair. As well there was the time limit, and the fact that many workers, again suffering serious injury, would not be ready to return to the workforce after two years. There was no need in their minds to have a limit on the employer's obligation of two years and in fact they wondered how the board could possibly use two years, one and a half years, one year or any set limit when it was not in a position to determine the specifics of each case.

There was another concern as well with rehabilitation, which I have already outlined. The board now has a time limit of 18 months on the length of service. I would like to know what kind of limitation it intends to have under the new bill. It has not answered that question yet.

The whole point is that there are a number of areas where there are limitations or where the worker is expected to fit into some kind of category where he will be completely recovered, completely ready to return to the workforce, etc, and does not take into account at all the particular case of the worker or the injury he has suffered.

I would like to hear from the board because it did not come out during the course of its time before us why it has moved to a system that now puts all of these time limits and time restrictions in place. You cannot expect every worker in this province to fit into those categories. When CUPE Local 1750 members came before us they talked about "prefab rehab." They were exactly right. Under the bill, the board is putting in all kinds of obligations on workers that they will not be able to meet.

Fifth is the question of the prescribed rating schedule. Of course the minister, in making the announcements of this bill, said that the meat chart would be done away with. In fact, we have a meat chart that continues only under a different name, that is, the prescribed rating schedule.

There have been questions raised by members of this committee and by presenters before us as to what that rating schedule will be. The board gave us some idea that it may be based on the American Medical Association. Mr Wolfson said:

"The act would require the board to use a prescribed rating schedule for making this noneconomic loss determination. This schedule would be developed through a consultative process using, for example, the guidelines published by the American Medical Association and some international experts. We are doing a survey that I will describe to you in a moment."

If you read through the rest of the transcript you will find out that he never did tell us what kind of survey the board was doing in this regard, nor did he tell us who was going to be involved in this consultative process, nor did we get a definite answer one way or the other as to whether or not the AMA's guidelines would be used under this bill to replace the old meat chart.

I, for one, would be interested in seeing the particular survey that the board was doing, seeing its results and finding out exactly who was involved in this consultative process, because I have not heard from my friends in the trade union movement that they have been involved in a consultative process in any way, shape or form. So I would like to know who has been and what the results were.

Second, there was some discussion during the course of the hearing that this new schedule of the American Medical Association was far more precise than any schedule that had been used in this province. If that is the case, I

would like to find out from the board how it intends to tell the board physicians or physicians on the so-called roster to determine significant and unanticipated deterioration.

If the new rating schedule is so exact that it is going to be far more useful in determining noneconomic loss and the exact percentage of disability, how in the end are they going to tell their physicians to guess what the worker's condition is going to be down the road? We all know that when they actually rate people, they are suppose to take into account future deterioration. Since I would imagine they have already dealt with this or looked at it, I would like to know what they are going to tell their people who in the end are going to be making these kinds of assessments.

Finally, I would just quickly like to deal with the section on reinstatement for one moment. When the board was before us, I asked both the minister and Mr Wolfson what would happen to a worker who, after six months and a day with the employer after he had been reinstated, was let go by the company. Would he be eligible to receive vocational rehabilitation if he went back to the board?

I was quite specific in pointing out that this may be what will happen to many injured workers, that is, after six months and a day, they will be laid off from the company for an economic reason or some kind of problem in the economy where their services are no longer needed. Would they be eligible then to receive rehabilitation?

In fact, if you go through that particular section, while the minister said that he assumed that they would be eligible for rehabilitation he asked the president, Mr Wolfson, to respond, yes or no, as to whether they would. If you read through Mr Wolfson's response, you will find out that he does not answer the question; he does not say one way or the other.

My concern, of course, is that those people are going to be left out in the cold after six months and a day and the board will refuse to offer any further service. I would like the board to come back and deal with that particular section because it did not answer the question when the question was put to it by the minister himself.

Those are a couple of reasons. My problems which arose during the course of the hearings are reinforced by statements made by other people during the course of the hearing. I remember clearly that Mr Dietsch said he would be willing to have the board back, that he had some further questions. So I would hope that there is a motion put that all Liberals would find acceptable and I would certainly like to have the board back before us to describe in further detail what they intend to do with this bill.

The Chairman: Thank you, Miss Martel. Any other speakers about Miss Martel's motion? Mr. Wildman.

Mr Wildman: I just want to speak in support of the motion. The minister has said on a number of occasions—he said also when he moved his amendments—that this legislation would be a major change, that he is arguing for the good of injured workers in the province. Because of the way the bill is written, and this is continued in the amendments, there is a great deal of discretion given to the Workers' Compensation Board.

The board will still decide questions of rehabilitation and questions of determining how the change of the dual award system will be implemented. A lot



of this will be done by regulation once the bill is passed and so, obviously, particularly in sections of the bill that directly speak to the discretion of the board, it is important for all members of the committee to know what the board's intentions are. As we know, they are at this time studying ways of implementing this legislation and, as has been indicated by my colleague, they are administering their obligations to injured workers in some areas as if this legislation were already in effect.

I think it is important that we hear exactly what the impacts of the legislation will be from the WCB officials who will have the responsibility for advising the ministry, at least in drawing up regulations. Some of us would think that the board has probably already drawn up the regulations and it is from those regulations that the board is currently operating in terms of these issues. Those regulations will have as great or perhaps even greater impact on the injured workers of Ontario than the bill itself and the amendments.

I hope that my colleagues on the committee would agree that it would be useful for us to have officials of the board appear before us to comment on the issues my colleague has raised and other members of the committee might like to put to the board. I hope that the silence of the members on the other side in response to my colleague's motion is an indication of acquiescence and that the members of the committee will be voting in favour of the motion. I am sure that if the chairman were to put the motion now we would have one of those few moments of unanimity on the committee in support of the motion.

The Chairman: Well, we will see.

Mr McGuigan: I am sorry I have to disappoint my good friend.

Miss Martel: I am getting used to it.

Mr McGuigan: I believe that the minister or the parliamentary assistant or ministry officials, all or some of whom will be here during clause-by-clause, can answer those questions. I remind all members that we are not in the business of writing regulations. Just as a matter of procedure and common sense, the regulations cannot be written until the legislation is written. Following the legislation will come the regulations, which will flesh out an answer to what are certainly legitimate questions.

Personally, I would feel a little more predisposed to being more favourable on this if we had not had statements that have been repeated so many times that the opposition is totally opposed to the bill and will take all procedural ways to try to delay and prevent this from becoming legislation. On behalf of our party, I am sorry to tell you that we are going to vote against the resolution.

Miss Martel: In terms of the regulations that my colleague and Mr McGuigan have raised here, my real problem is that I believe, as my colleague does, that the board probably has most of this in place already. I would find it difficult if not impossible to believe that, as Mr McDonald has already been named director of implementation of this bill and has for some months now, the board has not looked at all of this inside-out, upside-down and probably has already established many of the definitions, criteria, etc, that will come out of the regulations.

Given the tremendous amount of power that is given to them under that section 20 of Bill 162, they should be willing to come and share with us



exactly what they have in mind. I would like to point out again just how much power the board actually has and how much further discretionary power is given to them to determine how benefits will be granted, who will qualify for a benefit, how long the person will qualify for benefits, etc.

For example, take subsection 20(d), which states that the board will establish "criteria for assessing the personal and vocational characteristics of a worker." How far-reaching and fundamental can that possibly be? It will determine everything about that individual worker, whether indeed he is in a position to receive rehabilitation, what his skills are and what his personal characteristics are. What exactly does that mean and why would we as a committee ever leave it in the hands of the WCB to define those kinds of terms?

All of us know that during the course of the hearings many groups—not only union groups but employer groups as well—came before us and complained to a great extent about how much discretion the board had, how unfair the system became as a consequence and how they would like to see the power of the board limited. When I look at the regulations, I do not think that we are in any way, shape or form limiting the board and I do not think we are doing ourselves or workers in this province a favour by not trying to find out what the board has in mind for these regulations before this bill is passed.

Let me give you another example. The board has the power to establish "criteria for determining what constitutes suitable and available employment." The only thing that happened under the new amendments to the amendments to the amendments was that the minister now has set out some very flimsy guidelines as to what would limit the board in some type of way when it tries to define those particular terms.

We heard again and again from people who went back to the hearings in 1983 and, in particular, put into print for this committee what Mr Sweeney and Mr Wrye had said about the importance of defining "suitable and available" and about the importance of not leaving those types of definitions in the hands of the board. Members will recall that Mr Wrye's statement to this effect was quite clear, that he did not trust the board, that workers in the province did not trust the board and he, as a legislator, was not going to leave it in the board's hands to define those terms.

We have done exactly that. We have left it completely to the discretion of the board again. We have provided some guidelines, which in my opinion are flimsy, as I have said, are pretty weak-kneed and do not really in any way, shape or form limit the power the board has to define terms in any way, shape or form that it chooses, to the detriment of workers.

If you go through that whole section, they establish the criteria for determining the essential duties of a physician. What does that mean? What does the board have in mind? I can assure you that most of these things will already have been written out, that the board has, I am sure, all of these regulations already drawn up, because once this goes into effect, some of these provisions come into effect almost immediately.

I cannot believe that, as a committee, we would not want to haul those people in here and find out exactly what they have in mind. In the past we have seen that they have had far, far too much discretionary power. It is ridiculous in my mind that, as a committee, we would give them even more, without having the faintest sense of what in fact they are going to do, given this tremendous amount of power.

I, for one, would be very interested in having them before us, even to

deal exclusively with the question under the regulations and the powers they have to define the terms and what definitions they are in fact going to put to some of those terms.

The Chairman: Any other questions or comments on Miss Martel's motion? Does everyone understand the motion? Is the committee ready for the question?

Miss Martel: No, we are not ready.

The Chairman: Do you want a 20-minute time delay?

Miss Martel: Yes.

The Chairman: All right, at precisely 4:40 we shall hold the vote on Miss Martel's motion.

The committee recessed at 1622.

1642

The Chairman: All those in favour of the motion, please indicate. All those opposed?

Motion negatived.

The Chairman: It is defeated, 6 to 2. Mr Wildman, which clause?

Mr Wildman: I have a motion I would like to put.

The Chairman: Mr Wildman moves that, since the Minister of Labour moved a large number of amendments to Bill 162—amendments which the minister claims make some significant substantive changes to the bill—after the committee finished its public hearings on the bill, the committee reopen public hearings to give all interest groups—representatives of injured workers, labour unions and employer groups—the opportunity for input on the minister's amendments before the committee commences clause-by-clause debate on the bill.

Mr McGuigan: For what purpose?

The Chairman: I think the government members wish an explanation for your motion, Mr. Wildman. Do you wish to speak to it?

Mr Wildman: We have before us this book of government amendments to Bill 162. There are some 60 pages of amendments and explanations for amendments which the minister presented to the committee. If you look at these pages, you will see that this large number of amendments seem in many ways to almost rewrite this legislation.

I appreciate the fact that the minister has said the amendments made substantive changes and were in response to some of the positions taken by various interest groups before the committee when we were holding hearings, although some might dispute that. But if they indeed do make substantive changes, it seems to me that the committee is in the rather awkward position of having heard presentations from a wide number of groups, even though we heard only about half of the ones that wanted to make presentations, about a bill which has now been rewritten, so they were really speaking to a bill that

is now outdated. Therefore, we do not have the benefit of the input from these various groups on this new bill now before us which incorporates a large number of amendments introduced by the minister.

It would seem that, if indeed these are substantive amendments, some of the comments that were made to us, which we will be using in determining how we will vote on the bill, may now be out of date. There may be some of the objections that were raised by some groups that have been responded to by the minister and therefore no longer apply and, in many cases, there may indeed be some situations resulting from the new amendments which would raise further objections as well as some situations that have been resolved.

It would seem to me useful to the committee members to give those groups an opportunity to make a presentation on the new bill. Some of those groups may not avail themselves of the opportunity, but we would certainly want to give them that opportunity, I am sure. It would be useful for us as members of the committee to hear from them if they have constructive criticisms to make of the new amendments and the new bill that has resulted.

You will note from the explanations—I will not bore the committee by going through the explanations—that there are amendments that in some cases have explanations which are more than a page in length. I am not sure if all of these amendments are as long as they appear in this booklet. I have not cross-referenced them all with the reprinted bill, but some of them may in fact be almost reprinted word for word from what was already in the bill with just a few minor changes. The minister did not indicate that when he made his presentation to the committee. He said that these were substantive amendments.

If you look, just for instance, at page 19 in this booklet that the minister tabled with us, the amendment to section 15 of the act as printed here—and I will not go into the substance of it—goes on for three and a half pages. That is a significant change. Of course, some of it may be repetitive of what was already in the bill; I do not know that. But if it is not, if it is all new, obviously it is a significant change to that section of the bill. That section deals with subsections 45(1) to (16) of the act.

Section 45 is a significant matter that is before us. It deals with issues related to noneconomic loss, which is central to the whole dual award system that is being proposed in this bill. If we are dealing with three and a half pages of new clauses, it would be most unfortunate, I think, for the committee to proceed to deal with this clause, much less all of the others that are in this 60—some pages without having the benefit of comment from the groups that are affected: the employer groups, the labour groups and the injured worker groups, at least.

I know that in moving this motion, we might be accused of trying to reopen public hearings on the bill. I would never want to be accused of that because it would be an unfortunate interpretation of the motion. As an aside, I would not be opposed to reopening public hearings on the bill. I do recall that we had something in the neighbourhood of 615 groups that got their names in before the deadline and then we were unable, for whatever reason, to accommodate all of those groups. We only heard about 300, so I think it would be useful to have allowed the other 300 to make their positions known to the committee.

It was unfortunate that, for whatever reason, the committee was unable to hear those groups, but at any rate I am not suggesting in this motion that we reopen hearings on the bill per se. What I am suggesting is that we have

hearings on the amendments to the bill, the new amendments that have been introduced, which is significantly different.

I know that the chairman might in fact have thought that was not in order if I had been suggesting reopening the hearings, but I am sure he realizes that this is dealing with amendments, not with the bill as it was printed when we were holding hearings.

If this motion is put and carried, I suppose I might be accused that this is in fact a delay tactic.

[Laughter]

Mrs Sullivan: Hansard should record much laughter.

1650

Mr Wildman: It is certainly true that our party is on record as saying that we do not like this legislation.

Interjection.

Miss Martel: Wait until Thursday.

Mr Wildman: It is also a matter of record that we do not think this bill can be amended to make it respond to the concerns that were raised in the public hearings. That is a matter of record.

Since the minister says in introducing these amendments that he has indeed responded to many of the concerns that were raised in the public hearing and we have heard from him on that, I think it would only be fair to allow those other groups that had raised the objections to come before the committee and to say either, "Yes, we agree with the minister that you have responded to our concerns" or "No, this is not an adequate response at all and it doesn't do what we thought should be done."

I hope that the members of the governing party, the party that supports the government, will want to find out if their minister has the support of the injured workers' groups and the labour groups and the employers' groups, the major clients of the Workers' Compensation Board in the province, before they vote on these amendments. It would be most unfortunate if the minister was mistaken and if for some reason he believed he had properly responded to these concerns but in some way or other has not been successful in properly responding.

Actually, it might be useful if we heard from these other groups, because they might not come before the committee and say, "Yes, it's been responded to adequately" or "No, it hasn't, it's no good, the amendment's no good." They might in fact have a third position that, "Well, this amendment goes partway, but there's something else that should be done and additional amendments are required."

I know some members opposite think we have been unreasonable in saying that this bill is so bad it cannot be amended. Certainly I would like to have the opportunity to hear from these groups to find out if indeed this bill can be amended, because at this point, if I am not given that opportunity, if I do not have the opportunity of hearing from those groups, I will probably be forced to vote against these amendments.



Interjections: Oh, no.

Mr Wildman: I want to have the opportunity to vote in favour of amendments if indeed the client groups thought those amendments were adequate. Now, I might be forgiven if I were to prejudge and to say I do not think they will say that, but then again, I would not want to prejudge what they have to say; I would rather hear what they have to say.

I hope that members opposite will agree to this most reasonable motion that I am putting that indeed we give the groups that have appeared before us—not the ones that were denied the right to appear before us, but those groups that have already appeared before us on the bill as it was originally written—the opportunity to come again to the committee and say what they have to say, what they think of these new amendments which the minister has introduced and which he claims are substantive changes.

If they are substantive changes, then of course I am wrong in saying that I do not think they really are. However, even if they are substantive, that does not necessarily mean they are desirable.

Miss Martel: I never thought of that.

Mr Wildman: In fact, they might be substantive amendments which make the bill worse, which would make it even more difficult for the injured workers of the province to gain justice and to gain the kind of rehabilitation rights, the kind of reinstatement rights, the kind of compensation for economic loss and personal injury they deserve.

I want to learn whether these indeed are substantive amendments, what the effects of them are as far as the client groups are concerned, if they are good effects or bad, if they do indeed respond to the concerns that were raised or if they are something that might be described as window dressing. I do not want to prejudge that but I hope that the members opposite will agree to give these groups the opportunity. As I said earlier, some may avail themselves of it, others may not, but I think they should be given the chance.

The Chairman: Thank you for that clarification of your motion.

Mr McGuigan: I interjected a question earlier. I assume it was recorded on Hansard. The question was, for what purpose? It was somewhat tongue in cheek, but the member answered my question very ably when he said that out of these proposed hearings would come further amendments. I am sure at that time we would have to have another go-around to cover those new amendments.

Mr Wildman: I had not thought of that, but it is a good idea.

Mr McGuigan: You confirmed our worst fears that it is not for the purpose of elucidating information; it is largely for the purpose of delaying this very important legislation.

I guess in my years here, being a friend and knowing the member who has just spoken, I have never heard him before being so self-effacing, so reticent and so lacking of assurance in his own abilities to present these points.

Miss Martel: He is humbling in his old age.

Mr McGuigan: He is mellowing a little faster than perhaps his years

would indicate, but I have every confidence in his abilities, when we come to clause-by-clause, to go through the record of the presentations of the various groups that were before us and also his private research and his talks with various groups of people.

He is very able and his colleagues are very able to present all of those positions and they are quite able to debate them when we reach that point. So I do not see where any purpose would be served by his suggestion. For that reason I guess I, for one, would feel compelled to vote against the amendment.

The Chairman: Does anyone else wish to speak on Mr Wildman's motion?

Miss Martel: I was hoping that Mrs Sullivan would jump in and accuse the member of coercing the committee. I was looking forward to that, given that it was already raised last week, and for that purpose had someone else move it. In any event, let me say a couple of things in support of the motion put forward by my colleague the member for Algoma (Mr Wildman).

One of the criticisms this committee heard as it travelled and held public hearings referred to the changes in the bill that the minister had announced in the House on 19 January when he announced the amendments to the amendments. As members will recall, there were four particular changes at that time, changes concerning appeals to the WCAT, changes concerning the Human Rights Code and language that would be used under the reinstatement section of this bill, and finally, changes concerning who would be allowed to assess an injured worker when it came to talking about noneconomic loss.

1700

One of the criticisms that we heard again and again as a group was that although the minister had made the announcements on 19 January in the Legislature and to the press, and although members of the committee had requested that we see the legislative language before the committee started out on the hearings, the minister did not provide the committee with those, nor did he provide the public with the language. It was a little bit difficult for people coming before us to make comments about those sections because they had not seen the actual text or the language the minister was going to use.

Here we are again in the same position, having the minister now moving amendments to the amendments, which as the minister has said have substantially altered the text we used during the course of the hearings. I do not know whether the bill has been substantially altered. I know there has been a great deal more wording put into it in particular sections, so much so that it required a new bill to be printed to accommodate some of those word changes. But I do not know whether the actual text or some of those changes are really going to have a dramatic impact and respond to the many concerns this committee heard during the course of those public hearings.

If we are going to avoid being accused, not only once but twice, of having legislative language that people cannot respond to, then we are certainly not travelling along a route I would like to see us on in order to provide real reform to the workers' compensation system.

I think it is fair to say we are not suggesting those groups that did not have a chance to come before us should now be placed on the list. Members will recall what we went through during the course of the hearings to try to

have those hearings extended in order that all groups would have the opportunity to be heard.

You will remember that my colleague the member for Algoma, my colleague the member for Hamilton East (Mr Mackenzie) and myself on many occasions moved resolutions that would have opened up the hearings in the community where we were, so that those groups that were on a waiting list could be accommodated. I still think that was an important exercise. I think those groups deserve a chance to be heard. The doctors were heard on Bill 194. I could not believe we could not hear them on this bill, which is so important to injured workers, future injured workers, their representatives and MPPs who deal with compensation.

We are not saying that those many groups, 300 or so, that did not have a chance to be heard should now be given that opportunity. In fact, what we have said is that those groups that came before the committee and proposed, some of them, some substantial changes should now have the right to return before the committee to say their piece, to tell us whether we have listened as a committee, or I should say, whether the minister has listened to what they said during the course of the hearings and whether the new changes that he proposed some two and a half weeks ago respond to their concerns.

There were a couple of sections that were particularly onerous for the groups that came before us. Many groups had some problems in particular with reinstatement, rehabilitation, the dual award system, etc. In terms of deeming, for example, I know the minister has said, not only here two weeks ago but in the House in response to questions from me, that in fact we now have in place, under this new improved version, the means to check the board when it tries to deem workers capable of doing all kinds of outrageous jobs, to cut them off or to deny them benefits as a consequence.

The change that has been made of course, as I mentioned before, is that he has tried to set out some parameters within which the board will define "suitable and available," and the board is to look at, for example, the fitness of the worker, the health and safety consequences to him in carrying out that particular job, the existence and location of the employment opportunity that the board has deemed him capable of performing, and finally, the likelihood of the worker securing employment.

The minister has tried to suggest that by putting forward these types of parameters, we are going to undo some of the ridiculous decisions the board has been making with regard to deeming and with regard to what kind of jobs it feels injured workers are capable of performing. I do not think that responds to anything at all and that in fact deeming is going to continue at a unprecedented rate.

However, I would certainly be more than willing to listen to those groups that have already come before us during the course of the hearings to see if these new parameters do away with some of their fears. I think it is safe to say that not only the injured workers groups, but also the trade union representatives, and in particular the legal clinic, really dealt with these sections, the deeming sections, to a great extent and were extremely concerned that what we had seen happen in Saskatchewan was going to happen here, and indeed would continue on from what has already been happening here since November 1987.

I would like to know from them whether they think the new guidelines the minister has put in place in the regulations will halt the practice of



deeming, make the system any fairer or any more just and do away with the current injustices that are going on under this particular section.

Those groups spent a great deal of time, money and effort to come before our committee. They have years of experience in dealing with compensation matters. They have probably forgotten more about compensation than any of us will ever know. I certainly think that if the minister has come before us and said, "We have responded to those concerns; we have listened," then those groups should be able to come before this committee and tell us whether or not they think their concerns have been met and whether or not the minister is justified in claiming, as he has done publicly, that these changes respond to what was heard during the course of public hearings.

I, for one, would suggest that the concerns have not been met and that if this committee had really been listening, it would have withdrawn the bill, because that is what the overwhelming majority of groups said. However, I would certainly be willing to give the benefit of the doubt to those groups to come before us again—the employers as well; even the board for that matter—and tell us what they think and whether they are satisfied that the public hearings were not a complete waste of time, but that members of this committee, Liberal members in particular, and the minister and his staff have really listened to have they have to say.

The deeming section is only one area where there was a lot of conflict and discussion by presenters about how dangerous they felt that particular section was and how changes were required. Members will recall as well that there was a great deal of discussion around the question of noneconomic loss and how noneconomic-loss awards would be determined.

Many groups that came before us where particularly concerned that the family physician, the doctor who treated the worker on an ongoing basis, did not play any role under this section. That has not been changed. What the minister has done instead is to respond to part of the concern, which is the concern that workers would only be able to have that award reassessed twice during the course of a lifetime.

Members will recall that many groups that came before us said it was like a game of chance or roulette, and you had to be very careful about when you used up all your chances, because if you were a younger worker in particular and you used up both your chances right away, there would be no compensation for the rest of your lifetime if your condition deteriorated.

Many representatives said workers would be very desperate if they received a small award. They would apply to the board immediately to have their permanent disability reassessed because they were so concerned that the award would be so small. The reps said in particular that many workers would use up their two chances almost immediately, or as soon as they possibly could, given the constraints of this bill, in order to try to get a level of funding that would allow them to feed their families, pay their rent, etc.

The minister responded by removing the section that said you could go only twice and putting in another that says you can have your pension reassessed at any point, that there is no restriction in terms of the number of times you could go to the board to be reassessed.



1710

The problem is, then, that I would be interested in finding out from those groups if they feel the minister has adequately dealt with the whole question, given that you can only get a pension assessment if significant and unanticipated deterioration is shown. I, for one, think that not only was the question of two kicks at the can very important, but also this whole question of what was significant and unanticipated deterioration. How would board doctors or doctors on a roster appointed by the board deal with that question? What determinations would be made and how could a physician possibly determine or predict in his or her crystal ball what the future situation of the worker would be?

I think they should be able to come before us and state whether their concerns with that section have been addressed or whether the minister should also have taken into account those two very complex words—"significant" and "unanticipated"—and how the board would deal with those two words in particular, and what the possible consequences were going to be for workers who were hoping to get benefits. Would or would they not actually get benefits if those words remained, if that wording remained? I think the large number of groups that came and dealt with that section in particular should be entitled to have their say in that regard.

The last area where there was some significant change in wording occurs in the reinstatement section. There, members will recall that many groups—in particular the construction groups that came before us on the side of the workers—were particularly concerned that they had been left out of this section and were, under the old bill, exempt from this section. Many of the groups that came before us were organized and already had right in their collective agreements provisions to be reinstated with the employer in spite of the hiring hall practice, and they were extremely concerned why the minister would ever exempt the entire construction industry, some 323,000 workers, when they had been accommodated through collective agreements with their employers.

You will also recall that we had before us representatives from the construction industry itself who said that the hiring hall practice was not a tremendous problem, that if the groups could sit down and deal with it, they probably could come up with provisions that would deal with reinstatement of workers in this industry.

If you go to the bill, you see that what the minister has done is basically an out-in-out process. In the section on reinstatement, the groups that are exempt, the construction industry, have been taken out of that section, then have been put back into subsection 54b(9), and then in fact have been taken out again because what subsection 9 says is that the manner in which these groups will be accommodated will be prescribed in the regulations. It is significant to note that the construction industry has not really been included under the reinstatement provisions because we do not know how that is going to be done.

Again, like a great many things under this bill, that is going to be left to the board to decide and to work out through regulations, which of course we, as MPPs, will have no participation in. So it is a little difficult for me to accept that the construction industry has in fact been included when if you look at the wording of the bill, you see it has not.

But again, I would certainly give the benefit of the doubt to the groups that came before us, to hear what their view of the matter is. If, after reading this bill and the changes concerning reinstatement and concerning their industry, do they feel they are now included? Do they feel that by putting them into the regulations, all that is going to happen is that it is going to be sloughed off and that at some point or another, five or ten years down the road, they may be included? Do they really feel they are going to be covered at some point in the very near future under these sections?

I certainly think those groups, since they were so concerned about it and since the minister has said he has responded, should have the opportunity to come back before this committee and state their case.

If I can just follow up from what my colleague has said, the minister has said these changes are substantive. Certainly, a whole lot more wording has been put into many sections of this bill. Whether or not the changes that have been made or the wording changes that have been made significantly alter the aim of this bill remains to be seen. I, for one, would certainly like to hear from the client groups or the groups that were before us, which spent a lot of time, money and effort to point out their concerns, if they feel this government and this minister have listened.

The minister has said he has. Committee members have said: "We responded. We did listen. Here are our changes." I would like to know how substantive they are. Will they make any difference to all of those groups, the trade union movement, legal clinics, injured workers groups, employer groups etc? Will they change their view of this bill? Would they consider supporting this bill as a consequence?

Do they continue to feel that even though substantive wording changes have resulted, in fact the pretext or the aim of the bill has not changed and therefore does not suit their purposes? What is their general feeling and what are their sentiments, given the new amendments to the amendments to the amendments that were introduced.

I think what we have proposed is certainly in order. We have not said to bring in all those groups we have not heard from, but in fact to get this information out to the groups we heard from. They do not all have to come, but invite them to come before us so they tell us, as a committee, whether or not their concerns have been addressed and responded to by these new changes.

Mr Wildman: Just has an additional comment, the clerk has reminded me that the amendments have not yet been moved. They have been tabled. So if it is in order, perhaps we should amend the motion to say that the Minister of Labour tabled a large number of amendments rather than moved. I think that is a friendly amendment.

I would like to respond a little to my friend the member for Essex-Kent (Mr McGuigan). He was very complimentary in his comments. I must say that while I consider Mr McGuigan a good friend, I am also aware of the old saying, resulting from the Trojan horse story, to beware of Greeks bearing gifts, when I hear such compliments from the other side.

Mr McGuigan: I'm Scotch-Irish.

Mr Wildman: The member said I was self-effacing. Well, I have seldom been accused of that. I will say, Mr Chairman, that you are one of the fortunate members of the House not to have been present on Thursday. The

atmosphere here in this committee is substantially better than the atmosphere in the House of late. I suppose perhaps the government members here, the members of the party who support the government, have the confidence of numbers and feel the process we are engaged in right now is really just postponing the inevitable.

I will be quite frank. It is certainly true that the member for Essex-Kent is fully aware that in a majority government situation the only option open to opposition, if there is genuine concern about a piece of legislation that is introduced by the government, is delay.

I want to make clear that while I spoke somewhat tongue in cheek before, we are very serious that we do not like this legislation, that we think it is bad and that it will affect injured workers in a way that will set their cause back rather than moving it forward. We do not have very many weapons in our arsenal.

Frankly, as an aside, the changes to the rules that were proposed by the government House leader on Thursday will in fact even more strictly limit the weapons available to mount opposition. I know Mr McGuigan is the only member of this committee present today who was in opposition, other than the chairman and myself, before the election of 1985. I think he might have some recollection of the difficulties faced by an opposition party.

1720

Mrs Sullivan: On a point of order, Mr Chairman: Could the member speak to his motion, please?

Mr Wildman: I am explaining why I have moved it and I am being frank about it. Having said that, if they are not exactly substantive amendments, there certainly is a substantial number of amendments that the minister has introduced. While part of the purpose of this exercise is to delay—I am being frank about that—the other purpose is, as is stated in the motion, to give these groups the opportunity to express their views on these large number of amendments introduced by the government.

I think it would be useful to all of us, as members of the committee, before dealing with this clause by clause, to hear what they have to say. The member for Essex-Kent indicated that the problem with that was that if there were amendments during the clause-by-clause period of dealing with this bill, we would then move another amendment saying we should have hearings on those amendments.

As part of the delay, we in fact might indeed move such a motion. I do not know whether we would, but we might. I frankly doubt that we would have as many amendments moved at that stage. Certainly, from our party, I know we will not have as many amendments, if any, as the government has introduced.

This is government legislation. It is a government bill and when the government then comes forward with this many amendments to its own legislation, if they are indeed substantive amendments, that means one of two things. It means the bill was poorly drafted in the first place or that the government, since drafting it initially, has come to the conclusion that there needed to be changes. If they are changes, then the groups that we asked to come before us before have not had an opportunity to express their views of those changes.

So, there are really two purposes in moving the motion and my friend was right. One of them was delay, but the other is as stated in the motion. I think it would be useful to hear these groups and their views on these changes that the minister has tabled. Obviously, the proof will be in the pudding. Eventually, we will know, one way or the other when this process is completed, whether or not we have improved the situation for injured workers in this province.

If the bill with the amendments now before us proceeds—I do not think that will be the case—the problem with that is, if the government is right, then fine; if we are right and the government is not, then the people who pay for it are not the members of this committee or the members of the House, but the injured workers of Ontario. I am serious about that. I am not in any way being facetious.

I do not think we should proceed without giving them the opportunity to say what they think about these amendments given to the committee by the minister, because they are the ones who will pay and pay dearly if these amendments do not do what the minister has said they will do. What those groups have said outside of this committee, the very day the minister tabled them with the committee, is that they would not have the proper effects, that they would in fact leave things as bad as they were before with this bill or, in some cases, perhaps even make them worst.

I would hope the members of the committee, accepting that the opposition has to deal with delay as a tactic, will also look at what I say in the motion and the other reason for moving the motion, which is genuinely to give us the opportunity to hear what these groups who will be directly affected by the legislation on workers' compensation in Ontario have to say about the amendments.

The Chairman: Thank you. Any comments on Mr Wildman's motion? If not, is the committee ready for the question?

Mr Wildman: No, I would like to have the other members come in. I will need 20 minutes to get them.

The Chairman: Okay. There is a vote in the chamber at 5:45 at which time all members will be expected to be present, I am sure. The bells will ring at 5:45 in the Legislature so that if we come and vote at 5:45, we can then return to the assembly. All right? We are recessed until 5:45.

Mr Wildman, there has been a request that we could meet at 5:20 with unanimous consent in order to allow members to get to the House for 5:40, if there is unanimous consent. Otherwise, they have a right to the full 20 minutes. It is up to you. No? All right. We will meet at 5:45.

The committee recessed at 1726.

1745

The Chairman: We are back in session. Does everyone understand the motion put by Mr Wildman?

Mrs Marland: Recorded vote, please.



The committee divided on Mr Wildman's motion, which was negatived on the following vote:

Ayes

Marland, Martel, Wildman.

Nays

Brown, Leone, Lipsett, McGuigan, Sullivan, Tatham.

Ayes 3; nays 6.

The Chairman: We are about to be called to the chamber for a vote. I assume that means we will not be able to get to section 1 until first thing on Wednesday afternoon. We are adjourned until then.

The committee adjourned at 1747.

### **HANSARD REPORTING SERVICE**

Room 481, Legislative Building, Queen's Park, Toronto, M7A 1A2

Telephone (416) 965-1456

Index Inquiries: (416) 965-2159

**Editor of Debates:** Peter Brannan

**Deputy Editor of Debates:** Ernie Hemphill

**Editors:** Don Cameron, Chief; Alex Jenkins, Deputy Chief; Edward Patrick, Supervisor; Pierre Beauchamp; Karen Bennett; Liese Binnie; Larry Bruner; Drummond Burgess; Deborah Caruso; Anne Lynas; Wendy Mills-Descheneau; Liz Renzetti; Steven Smal; Janice Spellerberg; Sheila Wawanash

**Reporters (Tape):** Kit Anderson-Knight, Administrator; Margaret Elkins, Wilda Ferguson, Supervisors; Jean Andrews; Sandra Arrizza; Peggy Brooks; Carolyn Brown; Sharon Chalupiak; Danica Dolenc; Margaret Grobicka; Richard Hilson; Barbara Milnes; Sonia Nesbitt; Chantal Perron; Margaret Prince; Mary Sutton

**Reporters (Shorthand):** Pat Girouard; Beth Grahame; Carol McIntosh; Maureen Murphy

**Reference:** Patricia Tolmie, Co-ordinator; Teresa Hamilton; Lynda Middleton

**Index:** Elise Sloga, Chief; Alison Sawatzky

**Editorial Assistants/Printer:** Corrine Marnoch; David Woodruff; Eamon Kade

**Secretaries/Receptionists:** Edith Landry; Ethel Allan

**Messengers:** Stephen Marshall; Mani Pascucci



CA20N  
XC13  
-578

R-6

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT, 1989

WEDNESDAY, 14 JUNE 1989





STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Kormos, Peter (Welland-Thorold NDP) for Mr Laughren

Roberts, Marietta L. D. (Elgin L) for Mrs Stoner

Sullivan, Barbara (Halton Centre L) for Mr Dietsch

Clerk: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, 14 June 1989

The committee met at 1537 in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

The Vice-Chairman: All right. I see a quorum, I guess. We are to deal with Bill 162, An Act to amend the Workers' Compensation Act, and the amendments tabled by the minister. Are you ready to begin clause-by-clause?

Miss Martel: No. I am almost done, people. Maybe by next week we will be ready to roll.

Mr Chairman, I have a motion which I can read into the record now, then give to the clerk and outline it.

The Vice-Chairman: Miss Martel moves that the committee direct the clerk to invite appropriate representatives from Quebec (trade union movement, employers, Ministry of Labour and the Quebec WCB) to brief the resource development committee on matters relating to rehabilitation and reinstatement.

Mrs Sullivan: On a point of order, Mr Chairman: I think the motion is out of order in that it repeats the argument for reopening public hearings which was defeated at the last meeting. The intent of the motion is tantamount to the motion which has been dealt with by the committee, where a majority of the committee voted against having public hearings on the amendments, and in fact accomplishes the same thing.

Miss Martel: Let me speak to the motion.

The Vice-Chairman: We have a point of order being raised. Is there anyone who wishes to speak to the point of order? Do you have a point of order?

Miss Martel: Yes, I do. I do not see how this can be construed in any way, shape or form as being similar to the motion that was moved yesterday concerning reopening of the public hearings.

If I go back to yesterday's motion—I do not have it before me and I apologize for that—it seems to me that we were quite clear in our deliberations that we would limit our business to inviting those people who had appeared before the committee in fact to reappear, to give their comments on the new amendments to the amendments to the amendments. We stated quite clearly that it would be confined to those groups that had had the opportunity to come before the committee during the course of public hearings and that all of those people did not have to appear if they did not choose to.

But the people that I am dealing with in this motion certainly did not appear before the committee in any way, shape or form. We did have two delegates from Quebec who were brought in at the expense of the Toronto consultants, but I have not even stated that those people should be the ones

to come back. So I cannot see how this in any way relates to yesterday's motion about reopening public hearings.

The Vice-Chairman: Just for the information of committee members, I will read the motion as it was put before the committee and defeated yesterday:

"That since the Minister of Labour tabled a large number of amendments to Bill 162, An Act to amend the Workers' Compensation Act—amendments which the minister claims make significant substantive changes to the bill—after the committee finished its public hearings on the bill, the committee reopen public hearings to give all interest groups—representatives of injured workers, labour unions and employer groups—the opportunity for input on the minister's amendments before the committee commences clause-by-clause debate on the bill."

The important section of the motion as it relates to the point of order is that "the committee reopen public hearings to give all interest groups—representatives of injured workers, labour unions and employer groups—the opportunity for input on the minister's amendments." Among other things, the minister's amendments deal with rehabilitation and reinstatement.

Miss Roberts: May I speak to the point of order?

The Vice-Chairman: Yes.

Miss Roberts: I do not have the full wording and I was not here yesterday with respect to this, but I have had the opportunity to hear what you said. I think it is very important that we delineate very carefully what was dealt with yesterday. To go through the argument time after time without bringing something new before the committee would not be helpful, so if I might have just a copy of the two of them I would appreciate that. Then I could more fully put forward my explanation on the point of order. Are there copies of the motion?

The Vice-Chairman: Yes. The clerk is in the process of preparing copies so that they can be distributed to members.

Miss Roberts: Okay. Thank you.

The Vice-Chairman: As I read the motion that was defeated yesterday, it does not deal with representatives from Quebec, unless they were to be included in "all interest groups." This motion deals with "representatives from Quebec (trade union movement, employers, Ministry of Labour and the Quebec WCB)." The interest groups that were included in the original hearings included representatives of the injured workers from Quebec and I suppose representatives of the trade union movement; I am not certain of that. In that case I will rule the motion out of order.

Miss Martel: Before you continue, Mr Chairman, I am going to have to challenge that ruling, because I do not think it is the same as yesterday's.

The Vice-Chairman: That is your right.

Miss Martel: I specifically limited—

The Vice-Chairman: If you are challenging the ruling, I will have to vacate the chair and ask—where is Mr McGuigan? I was going to ask him to take the chair. I will ask Mr Brown to take the chair and you will state your reasons for the challenge.

The Acting Chairman (Mr Brown): Miss Martel, if you would like to place your argument.

Miss Martel: Thank you. I am challenging the chair in this regard because I have limited the motion specifically to Quebec in the first case and representatives from that particular province, and specifically as well to the cases of reinstatement and re-employment, given that that province has mandatory reinstatement and mandatory rehabilitation rights for injured workers.

I feel it is different from the motion that was raised yesterday because, going from what we were discussing yesterday—I do not have a copy of the motion and I do not know if the chairman is going to provide us with both of them—it seemed to me we were requesting that the hearings be reopened to discuss the minister's amendments as they were put three weeks ago in this committee.

In the motion that I have raised, I have not stated that I want a discussion of the amendments as placed by the minister three weeks ago, but that in fact I want that group to come and brief us on two particular provisions within Bill 162, including rehabilitation and reinstatement. I do feel that it is different. I am not suggesting that everyone across this country who has an interest in workers' compensation should come before us.

I have limited it to two areas, which I have not said should be a reflection of that group upon the particular amendments that the minister moved. I have stated clearly that they come to brief us on the questions of reinstatement and rehabilitation. I think that if you looked at their two systems, then you would find that there is a great deal more in those two systems than appears in the amendments that the minister has placed.

I do not anticipate nor do I expect that they would come here to talk only about the minister's amendments. I would like them to talk about reinstatement and rehabilitation as it operates in their province and how it can work here. For those two reasons I am questioning and challenging the previous ruling that was made and I would open it up for any further consideration, any other comments or whatever ruling you are going to make.

The Acting Chairman: The challenge is not debatable. I will then put the question. Shall the committee uphold the chairman's ruling? In favour?

Miss Martel: Before you do that, I am waiting for Peter Kormos to come in here and substitute, and I would like my 20 minutes so I can get him.

The Acting Chairman: Is that acceptable? We will adjourn until seven minutes after four.

The committee recessed at 1547.

1608

The Acting Chairman: I will put the question: Shall the chair's ruling be upheld? Those in favour? Opposed?

Agreed to.

The Vice-Chairman: Shall we begin clause-by-clause on Bill 162?



Miss Martel: On a point of order, Mr Chairman: I am not sure if I am going to have the same thing happening or not, but the next motion I was going to move concerned having Paul Weiler appear before this committee, given that the whole proposal on the dual award system is actually his. Oh, there you are, Mr Kormos. Thank you. I would be very reluctant to suggest that Mr Weiler—

The Vice-Chairman: Could you please move your motion.

Miss Martel: Yes. I will have to write it first, if you do not mind, Mr Chairman.

1610

The Vice-Chairman: Miss Martel moves that the committee direct the clerk to invite Mr Paul Weiler to appear before the resources development committee to brief this committee on his vision of a dual award system.

Mrs Sullivan: On a point of order, Mr Chairman: I believe the motion is out of order. My argumentation would be very similar to that used on a prior motion that the motion is tantamount to reopening public hearings, and the committee has voted that down six to three on a motion. The motion is so similar to the one you have just ruled out of order that I suggest this motion is out of order.

The Vice-Chairman: On a point of order, Mr Kormos?

Mr Kormos: Yes, if I may. I was confused, because I would suspect that if there were a point of order being raised, then it would not be because the chair ruled similarly in the recent past. Unfortunately, I was not here.

The Vice-Chairman: I understand the point of order raised by Mrs Sullivan was the fact that the chair had ruled the previous motion by Miss Martel out of order in that a motion the previous day had been put to reopen hearings and invite all interest groups to make presentations on the minister's amendments. The chair ruled that the motion related to the Quebec workers' compensation board and representatives of Quebec labour was included in the previous motion, which had been defeated.

Mr Kormos: Oh, okay. I am sorry. So this point of order is in reference to a motion made yesterday.

The Vice-Chairman: The motion that has just been put is to invite Mr Weiler to appear before the committee. I have not ruled on that. Is there any other comment on the point of order?

Mr Kormos: Yes. I am reading the minutes from, I presume, yesterday; yes, 13 June 1989. There was a motion that was defeated. I think it is important that motion be carefully read because the important part is, first, "Since the Minister of Labour tabled a large number of amendments...amendments which the minister claims make significant substantive changes to the bill," it is moved that "the committee reopen public hearings to give all interest groups, representatives of injured workers, labour unions and employer groups the opportunity for input on the minister's amendments."

I know there are some people here who are lawyers and they could probably help me because there is a principle of legal interpretation that says when you have a series of items, you look at them to see whether that

creates a class of things. This appears to create a class of things, "interest groups, representatives of injured workers, labour unions and employer groups."

Obviously we are talking about this. The first word is "interest groups," followed by "representatives of injured workers, labour unions and employer groups." "Interest groups" would appear to help qualify or be the most general term there, and with more specificity goes on to speak of "injured workers, labour unions and employer groups."

Basically and quite rightly, it is a little bit redundant because "injured workers, labour unions and employer groups" are interest groups. They are groups of people who would be directly affected by this legislation one way or another, good or bad. They would be either the beneficiaries of good legislation or victims of bad legislation.

The Vice-Chairman: Before you proceed and if it is acceptable to the committee, I am going to ask Mr Brown to take the chair since this directly relates to a motion I myself put, as does the previous one for that matter. Also, I reserve the right to speak.

Mr Kormos: Do I have to start over again or is there some continuity?

The Acting Chairman (Mr Brown): No. I listened carefully.

Mr Kormos: These are sometimes difficult things for people to understand.

The motion on the floor now is an invitation for Paul Weiler to appear to brief the committee "on his vision of a dual award system." Paul Weiler surely is not an interest group as in injured worker, trade unionist or representative of employer groups. Paul Weiler surely would be and should be perceived as being somebody who has no personal interest in the outcome of the legislation or indeed in whether it is passed, because he is not going to be either a beneficiary of the legislation or a victim of it, which is distinctively different from the sorts of groups that were spoken of in the motion dated 14 June 1989.

Clearly, the intention of that motion was to reopen the hearings process that had gone on over the weeks and months prior to the return to this session when interest groups—injured workers, trade unionists and perhaps some employers—were appearing before the committee, basically to lobby and outline to the committee what they perceive the impact of this legislation is going to be upon them or upon people they represent. Those are interest groups.

Forgive me for making a reference to maybe a courtroom-type hearing, but "interest groups" implies people who have interest in the outcome, and that is an interested party. Obviously, when some witnesses are called in a litigation process you have people who do have an interest in the outcome. At the same time, you have people who have no interest in the outcome and these are people like expert witnesses, forensic witnesses, handwriting experts or evidence such as medical or psychological evidence, or you might have somebody with special expertise in the interpretation of foreign law who has no interest in the outcome. Indeed, they are treated in that kind of process distinctively differently from people who do have an interest.

As for the motion here, I have to tell you that to me the distinction between the two is very obvious. The more I read "interest groups, representatives of injured workers, labour unions and employer groups" the

clearer it becomes to me that was meant to be a recurrence of what had been going on in the recent past, speaking basically of lobbyists.

These people were not regarded as disinterested at the hearings stage when this committee was at the hearings stage. They were not regarded necessarily as sources of expertise as Mr Weiler would be. They were perceived as people who had a direct and immediate interest in the legislation because it was going to impact on them in a pretty direct and immediate sort of way.

1620

Paul Weiler is totally different. He is the author of a principle, concept, design or scheme, or indeed a vision which the legislation purports to embrace. To call upon him to provide input at this point is not calling upon an interested party. It is not calling upon somebody who is going to be a direct beneficiary or victim of the legislation. To call upon him is to call upon a resource in the community who we hope and presume is an objective, disinterested party. He would not have been called upon to author what he has authored in the past were he anything other than apparently disinterested and objective.

Surely this chair is not going to confuse the two classes of people and fall into that error. Surely the chair can understand the difference between an interest group and a disinterested group; in other words, a source of expertise. Surely the chair can understand that the motion yesterday had a clear intention because it says "reopen public hearings." It talks about resuming the process that was ended by virtue of the restraints of time that were imposed on this committee a long time ago about how long those public hearings would take place.

Under those circumstances, surely, for this chair to acquiesce in the point of order—perhaps even the person making the point of order would rescind that now that we hope she understands the distinction between the motion before the floor now and the one that was defeated yesterday. If she does not understand yet, a mere nod of the head, or mere silence, holding her position firm or looking away would influence me to expand on my efforts to explain it.

Miss Martel: Maybe you should expand on your efforts.

Miss Roberts: We are here to serve.

Mr Kormos: We are here to serve; that is right. It is two totally different things. It is really the classic apples and oranges and the two should not be confused.

Once again, holy cow, you have to look not only at the wording of the resolution. Come on. What really was its intent? What was in mind when people voted against it? The Liberals voted against it because they did not want to have any more public input by interested parties into the legislation.

They restricted the number of places where the hearings sat. They would not let the hearings sit in the Niagara Peninsula.

The Acting Chairman: Can you restrict your comments?

Mr Kormos: I am getting to what I understand to be the intent of the motion as worded. Obviously, some people are going to try to hang their hats



on the language of it. So you look at the whole thing. You look at who supported it, who opposed it and why it was moved. It specifically says "reopen public hearings to give all interest groups, representatives of injured workers, labour unions and employer groups the opportunity for input."

Does that not clearly make reference to the refusal of the committee in the recent past to expand the scope of the hearings so that all interest groups could make submissions? We knew what the people who moved for expansion of hearings were talking about. They were the people who wanted to sit in the Niagara Peninsula where there is a whole bunch of industrialized labour and where there are almost all Liberal members, except for Welland-Thorold. Some 600 groups wanted to make submissions and were not permitted to.

The purpose of this motion was to permit the balance of those "interest groups...labour unions" and even "employer groups, representatives of injured workers" and perhaps community legal services types, those types of clinics, to carry on with what had been happening before. This motion by Miss Martel does not talk about carrying on with what has happened before. Miss Martel respects the unfortunate decision that was made by the committee yesterday. She understands what the decision was. It was to carry on with the restriction of those public hearings with interest groups. Miss Martel is now saying: "Okay, we're through with the lobbyists. The committee said so yesterday. We're not going to hear from any more lobbyists. So we're beyond that stage."

She has accepted the fact, it appears, that we are beyond that stage. She is saying: "Okay, fine. We're finished with the lobbyists, with the interest groups, injured workers, etc. Let us now move on to the objective disinterested sources of information, like Mr Weiler, who can help us understand exactly what was intended, who is not going to try to influence."

Clearly he is not going to try to influence the legislation one way or another, but is simply going to help us. She specifies why she wants him here—"to brief this committee on his vision of a dual award system"—simply to make sure that this committee understands that it is doing exactly what it thinks it is doing on the basis of, "Say what you mean and mean what you say."

So we have two totally different concepts here: apples and oranges. The most recent ruling of the chair this afternoon really matters not, because what is significant is the fact that it is this motion from yesterday that is being relied upon to suggest this motion is out of order, not the earlier ruling today. That matters not. It could be good, bad or indifferent. What is being relied on is this motion and the denial of the motion from 14 June 1989. It is just incredible the members of this committee might initially have been unable to perceive the difference.

Mrs Sullivan was perhaps simply being overly hasty in raising the point of order and relying on the earlier ruling made today as compared to the motion and the determination of that motion yesterday. I would suggest very strongly that the point of order is not appropriate, that the circumstances simply do not warrant it and that the chair ought to permit this motion to go on to the floor.

Mr McGuigan: Mr Chairman—

The Acting Chairman: We have two other speakers, Mr McGuigan. Miss Roberts is also—



Mr McGuigan: I was going to point out that not all of us on this side are lawyers and learned in the law, but we have Miss Roberts who is learned in the law.

Miss Roberts: Not as much as Mr Kormos.

Mr McGuigan: As a dissenting opinion, I would suggest.

Mr Kormos: Was that on the record?

Miss Roberts: She said facetiously.

Mr Kormos: We will circulate that thoroughly.

The Acting Chairman: Miss Roberts?

Miss Roberts: I wish to hear from Mr Wildman. It is his motion we are discussing.

Mr Wildman: I would like to make some comments. I want to make clear that I am not going to be voting on your ruling if it comes to the point of a challenge. Obviously, I appreciate your taking the chair. But I do appreciate the opportunity to speak.

I would want to say a couple of things. First, on the last ruling on the previous motion, the chair ruled very narrowly. The chair understood that motion to relate to the motion of 14 June in that the Quebec workers' compensation board, the Quebec labour movement and the Ministry of Labour from the government of Quebec could indeed be seen as groups that are interested in Ontario legislation and the amendments that have been put before the committee, because it could be argued that the changes in Ontario relate to changes that have taken place previously in Quebec and will have effect, at least indirectly, on what happens in Quebec in the future. So that was a very narrow ruling and I hope the chair would rule as narrowly on this point of order.

1630

I would like to point out a couple of things. The motion that was moved on 14 June quite clearly was to reopen hearings for all interest groups that had appeared before this committee and that would want to comment on the new amendments tabled by the minister. In ruling narrowly, I hope the chair would recognize that Mr Weiler is not a group. Either interested or not interested, he is not a group. Mr Weiler, as far as I know, is an individual.

Also, as has been said before, as I understand it, Professor Weiler is a professor at Harvard—at least that is the last appointment I know of. He has written papers and carried on studies on workers' compensation, not only in Ontario but in British Columbia, and I suppose in that sense might be seen as interested, in a very wide interpretation of interest, in what happens with this legislation and particularly with regard to the dual award system. But he certainly is not interested in any way similar to those groups delineated in the previous motion. He is not interested as an injured worker or as a member of a labour union or an employer group. He is none of those, and for that reason he cannot be seen as an interested group in the way the Quebec labour movement could be seen as an interested group.

Also on 14 June, in the debate on that motion that I put, Mr McGuigan argued at that time that the reason he and his colleagues were opposed to the motion was that the motion's intent was to reopen hearings. As I read this motion, the intent is not to reopen hearings so that we can have a wide-ranging set of hearings dealing with the concerns of all interested groups, but to deal very specifically with one individual and his views on one aspect of this legislation: the dual award system.

I will close by saying that if the chairman were to rule this motion in order, obviously then the option is still open to all members of the committee to express their views on whether or not the motion is desirable and to vote on whether or not the committee should indeed invite Mr Weiler to make comments. I hope that the chairman would rule as narrowly as the chair did in regard to the previous motion and recognize that Mr Weiler is neither a group nor an interested party in the same way as injured workers, labour unions or employers might be, but rather an individual.

The Acting Chairman: I am prepared at this time to make a ruling.

Miss Roberts: I want to be very brief and put on the record some of my concerns and those that I have heard. I have listened very carefully to comments that were made by both Mr Kormos and by Mr Wildman and I appreciate the information Mr Wildman gave, because I was not available on Monday for the information and for that argument, so that is very helpful to me.

You have the difficulty of adjudicating on this, and I would just like to put some of my concerns forward to you. The motion on Monday was one that dealt with the amendments first; basically, whereas that since there had been amendments, the committee was being requested to reopen public hearings to give all interest groups, and then thereafter it lists certain interest groups. But it does not mean that they are all-inclusive of the groups. It is my understanding that there were other interest groups that came before or gave written submissions to this committee, as well. It certainly was not all-inclusive as to those persons who might make up interest groups.

The operative part of the motion that is before us today is that the committee direct the clerk to invite a gentleman to appear before the standing committee on resources development to brief this committee on his vision of the dual award system. It has been argued very forcefully by Mr Kormos that indeed this man is an expert and not a lobbyist and that you would rely upon his expert advice as any group would rely upon expert advice, either as a tribunal or something. Here is a person whose advice you would take or be concerned with.

It would be my concern, and the reason I support the position of Mrs Sullivan, from what I have heard about this gentleman, that he is an expert, that he indeed might not want to come, to say the least of it. He might not wish to be here—we do not know anything about that—but, also, he has an interest; not a monetary interest. I do not believe all the groups that came before this committee have a monetary interest, either. I would say he is as much a lobbyist as any other lobby group, because it is my understanding that he is a gentleman who supports and has indicated a vision of the dual award system.

The operative fact that I see is that the committee is being asked to reopen public hearings. The fact that you are inviting someone to come in and give you further information would immediately also allow you to say: "Listen, he has given us further information. We should have the public comment on this

one as well." I think that information, if indeed he has done this work on the dual award system, his view, his opinions must be available in writing and could be made available to this committee. It is certainly not appropriate to open hearings.

Those are the comments I have.

Miss Martel: There are a couple things I would like to say. I am going to hinge my remarks around the wording from the motion yesterday which said "the committee reopen public hearings." It seems to me that when we first started out on this course in this committee, there was an agreement made by the committee that we would hold public hearings. In fact, we chose several communities around the province. We were given some time restraints by the government House leader about how long we could travel, and in the course of that we then had to determine which communities we were going to go to.

The Acting Chairman: Please speak directly to the point of order.

Miss Martel: That whole debate concerned public hearings and just how that process of public hearings was going to take place. I do not seem to recall that at any point either the committee or the subcommittee personally invited or directed the clerk to invite any group, groups, individual, individuals, etc. to come before the resources development committee to speak about the bill.

In fact, what happened was that, by obligation, it was the minister's bill, so the minister and his staff were here. The board was here not by invitation of the committee, as I recall, but because the board will have to administer the legislation. As well, the office of the employer adviser and the office of the worker adviser were here for the same reason, as functionaries of the Ministry of Labour. They, in the end, will have to deal with it as well.

I do not remember that this committee specifically invited any of those groups to appear before us; nor did we, when we started out on the process of public hearings, invite any particular group to come before us.

Mrs. Sullivan: I think you are speaking to the substance of the motion rather than the point of order.

1640

Miss Martel: No, I think I am talking about—

The Acting Chairman: I am prepared to rule.

Miss Martel: If you want to rule narrowly, which is what I am concerned you will do, we have to look at what "reopening public hearings" means. I am going back and taking a look specifically at what the public hearing process was and what yesterday's motion called upon this committee to do; that is, reopen public hearings: (a) pick new communities or old communities that we have already visited to go into again; (b) send notices out in the mail or to the Ontario Federation of Labour or whoever in order to come before us. Have all those—

The Acting Chairman: Do you not digress?



Miss Martel: No, I do not think I am, because we are talking specifically about the committee reopening public hearings. That was part of the motion yesterday. I am putting into context exactly what that meant for the committee, and that meant continuing on from where this committee had been before we finished off on 25 April or 18 April or whatever date it was, just before the Legislature resumed.

This particular motion was very clear in saying that we directed the committee to open that whole process up again: travel notices in the newspaper, people coming before us, all that type of thing. I have not—

The Acting Chairman: Miss Martel, you digress. I am prepared to rule.

Miss Martel: I will try to finish up then, Mr Chairman, but if I can go back to the motion, it does not say anywhere in there that we are reopening public hearings or going through that whole process again. I am specifically asking the committee to invite a particular individual with particular expertise. Nowhere does it say that we open up that whole process again as we finished off on 18 April.

The Acting Chairman: Thank you. I am prepared to rule against Mrs Sullivan's point of order and in favour of your motion. I think it is in order. I think it is in order merely because Mr Weiler is not a group and I am ruling very narrowly on that basis.

The Vice-Chairman: Thank you very much, Mr Brown. We are playing musical chairs here.

We are now on Miss Martel's motion that the committee invite Paul Weiler to appear before the standing committee on resources development to brief the committee on his vision of a dual award system.

Miss Martel: I just need to find the motion. I am requesting that this committee have Paul Weiler before us, in particular because of his expertise on the matter of a dual award system. As I take it, he is now doing some work at the University of Toronto and so has been seen in Toronto. I know the chairman mentioned somewhere in the United States, but I do think he is in Toronto. Whether or not he is willing to come before us, I do not know. I do think Mr Weiler has a particular expertise with regard to the dual award system and his vision of it that probably none of us has.

Members may recall that when the former Tory government was in power, the then Minister of Labour, now the chairman of the Workers' Compensation Board, Bob Elgie, commissioned Paul Weiler to do a report on how to reshape workers' compensation in Ontario. He was charged with the task in particular of looking at new models or new methods by which permanent disabilities could be compensated for; that is to say, was there an alternative model to the present model, which is, of course, providing payments on a monthly basis for a particular percentage of an injury that a worker suffers that is indeed permanent?

Even at that time the board was concerned with the high cost of compensation. There were a number of conferences going on nationally looking at workers' compensation and where it was heading, but Weiler's work in this regard probably broke new ground in that he was the first to be commissioned by a government to sit down and look at what models could be used other than



the model that had been in place in Ontario since early in the history of the board, 1915 or 1916.

He did quite extensive work in 1980, which was then reported to this House, to the Minister of Labour, and that Minister of Labour then took some of those recommendations—

Mr Brown: On a point of order, Mr Chairman: I think all of us in this room are willing to concede Mr Weiler's expertise and I would suggest that elaborating on his expertise is not really necessary.

The Vice-Chairman: I think that is a point of view, not a point of order.

Mrs Sullivan: Nice try.

Miss Martel: Do you want to say anything else? I have never met the man. I would be interested in meeting him.

Mr Brown: We were just going to save you some time.

The Vice-Chairman: The clerk is going to check as to what is happening in the House. Go ahead, Miss Martel.

Miss Martel: The basis of his first work, which is this particular piece here, was put into the Tory white paper which this particular committee studied in 1982-83.

The Vice-Chairman: We have a quorum call in the House.

Miss Martel: That model was particularly different. It had not been envisioned for any other jurisdiction across this country. As I said earlier, it was ground-breaking and it provided a whole new change in the way that awards for workers' compensation and permanent disability would be awarded. What it did was change from the permanent monthly pension to what was proposed at that time: a payment for non-economic loss and a payment as well for any anticipated loss of earning that the worker was going to incur if he could not return to his former employment.

At that particular time the white paper was drafted, the information was given to the standing committee on resources development and it was taken out on the road on public hearings during that period of time. It was opposed by a number of groups. It was supported by employers. In any event, for whatever reason, the Minister of Labour at that time, Bob Elgie, withdrew the dual award system as it appeared under the white paper and it did not appear in the government legislation under Bill 101.

In 1986 Weiler did another report—it seems to me this is his third—which concerned partial disabilities again and particular models for compensating for those permanent disabilities. He did say during the course of this particular book that he hoped the government would finally take it upon itself to incorporate some of his ideas if the government did indeed intend to revise workers' compensation in this province. I guess that after eight years of trying to put forward his view, or six years at that point in time, he was a little disturbed by the fact that it had not been incorporated and did not find its way into Bill 101.

What he has proposed in this case varies a little bit from his original proposal in 1980. My interest in having him before us would stem from a couple of things. I would be interested in knowing why he thinks this particular dual award system or a dual award system for compensating permanent disabilities is a better model than the present model we have, which provides for payment of disabilities on a monthly basis for the rest of an injured worker's life. I would be interested in finding out from him why he would think that was more fair or more just and what drove him to put forward these particular ideas when requested to by various Ministers of Labour in this province.

Second, I would think he would have had at his disposal a great deal of information concerning cost analysis; projections as to whether this would increase or decrease costs within the system; whether the system he proposed was in fact cost-neutral; what did it mean for employers; what did it mean for injured workers; what did it mean for the trade union movement, etc.

The concern I have with the bill as it is presently drafted is that this committee really has not got any information from the ministry as to what the proposed effects of this bill are going to be upon the system. The Minister of Labour (Mr Sorbara) has said on several occasions that he anticipates the bill will be cost-neutral.

1650

I know members on this committee will remember that as we toured the province many employers who came before us said they did not believe the system would be cost-neutral. They were extremely concerned that they had not been privy to or seen any cost analysis prepared by the ministry before this particular provision was introduced. They wondered how the system could remain cost-neutral, but were certainly concerned that no hard data in any way shape or form had ever been presented to them so that they themselves could make an objective decision whether there would be an increase in cost or a decrease in cost with a shift to this particular system.

I would think Mr Weiler, having done three reports now on changing the way we compensate for permanent disabilities, would have at his disposal and could probably make available to this committee that information, that hard data which I would think he spent some time putting together in order to determine that this particular system would be better for workers in this province or would be better for the entire system; so I would like to question him on what kind of evidence he has to support his agreement for this type of system.

I would also like to know about this: He did mention in the background paper to this particular book that he anticipated there would be a 20 per cent wage-loss buffer that employers and the board could count on that would help decrease costs. It is interesting to note that that particular statement, although it was in the original background papers to this book, does not appear in this book.

I have in my own files some of the comments he made about wage losses and what he anticipated some of the wage losses would be, which would in turn result in lower costs for employers. I would certainly like to have him before us and question him then on how he came by this information and what he is basing his judgement on. If indeed he believes there is a particular wage loss that would be put in place automatically with this system which would help employers, how does he justify a system where the victims of bad legislation are going to be injured workers and how does he justify calling the system

fairer, more equitable, etc, if indeed that is the case? I would be interested, in that regard, in having him before us to see why he took that particular section out of this book before it was finally published.

In terms of a resource, there is quite a bit of background he can bring to this committee about why he was motivated to choose this particular model, if he supports the model the Minister of Labour has incorporated into Bill 162. As I said earlier, there is a bit of change from the first to the third study he did over the course of six years and there has been a bit of change in view.

It is now some three years since the last publication of his new models. It would be interesting, I think, for this committee to determine if the view he had when he wrote the particular reports for this government have been met by the dual award system that appears in Bill 162, if his vision of a system that is workable and effective finds its way at all into this legislation or if he had something else in mind which perhaps this committee could consider and perhaps alter during the course of clause by clause on this bill.

I do think that in terms of studying particular models he has looked at a number. If it is not this dual award system he talks about here, perhaps there would be a number of other suggestions he may have that would work within our present system without changing the system dramatically, to try, in his words, to find a system that is more equitable for compensating for permanent disabilities. As he is someone who has spent a great deal of time dealing with compensation matters, particularly with what would be the most effective or fair way of paying for permanent disabilities or permanent partial disabilities, I think we would want as a committee to have some of his expertise.

I certainly hope he would bring with him, if indeed the committee voted for him to come, much of the hard data he used or gathered himself during the time he looked at these proposals, so we could have a clear idea of what he felt the impact was going to be on the system in monetary terms: whether it would be cost-neutral, whether it would require more administration or more people hired for administration on the part of the board in order to deliver this type of system, whether the reviews that are proposed are going to require more administrative people at the board in order to carry this particular system out and so on.

I think it would be a good idea for this committee to hear from Mr Weiler, if he can make himself available to this committee, so we can have his view of why he thinks a dual award system is preferable to the present method of compensating permanent disabilities and, second, whether he feels that what has been proposed in Bill 162 conforms to what his vision was or the model he thought would be most effective to compensate workers who suffered from permanent disabilities.

The Vice-Chairman: Are there any other members who wish to speak to the motion put by Miss Martel? I would caution members to try to speak to the motion directly and not to be repetitive. Mr Kormos?

Mr Kormos: Why did that admonishment—

The Vice-Chairman: It was not directed at you; it was to all members of the committee.

Mr Brown: You are overly sensitive.



Mr Kormos: I am sensitive and my feelings are easily hurt.

One of the things Mr Weiler said a long time ago, in 1980, struck me as perhaps being the paramount consideration in virtually anything this committee does; that is, his reluctance—as a matter of fact, not just reluctance but his adamance—that he is not suggesting, and he has been consistent in that regard, that workers' compensation is outmoded and should be dispensed with in favour of a revived tort action. That has clearly been adopted, if only implicitly, by this committee and apparently by the government.

The Vice-Chairman: Mr Kormos, the committee has not adopted anything at this point.

Mr Kormos: Hopefully implicitly by virtue of its course of action; otherwise everybody should just go home and not address the matter of a workers' compensation system. That is what I am talking about. I know Miss Martel has never suggested anything to the contrary, and I know all the members of the committee have read all the materials published by Mr Weiler from 1980 and 1986 and so on.

But seriously, and this is the important consideration, Weiler indicates that that certainly would be a retrograde step. He comments that, The initial premise of workers' compensation remains valid," and I think everybody on this committee agrees with that premise. "All workers should be guaranteed protection against loss of income due to occupational injuries irrespective of the incidence of fault, be it their own, their employer's or a fellow employee's. In return, the small number of employees who happen to have been injured as a result of the fault of their employer should not be treated as, in effect, winners in a lottery which permits them to collect substantially greater general damage awards in court."

Weiler in 1980 said, and it is true today: "Since this is the bargain which has been struck, then the workers' compensation beneficiary must be viewed in quite a different fashion than a claimant for unemployment insurance or social assistance who must appeal to the generosity of the community conscience. An injured worker does not enjoy his form of compensation as a matter of grace. He has been required to give up a common law right of action enjoyed by everyone else. That right would now be worth a great deal. In return, he must be considered entitled to full enjoyment of the statutory right he was promised in exchange. There still remains in workers' compensation considerable dilution in the degree of income maintenance afforded disabled workers."

1700

What is being commented on and what is so true is that it has been a significant tradeoff. I know all you people here are far more aware of that than I ever will be, because you have spent some greater amount of time dealing with this than I have as a new participant in this. This is the second time I have been here. I was with this committee in Hamilton when it sat and heard from injured workers and trade unionists and representatives of legal clinics.

What Weiler is talking about is that there has been a significant tradeoff, that workers have lost their right to sue in tort. What he indicates, and as a professor of law at Harvard Law School he would be more than competent in being able to indicate that the tradeoff has become all that much more significant with the passage of time. What he is saying there, I am



confident, is that the awards that would be given injured workers in a tort action—he talks about lotteries—would embarrass many lotteries.

Why I consider it worth while to mention that is because, as I say, that should be a paramount consideration. That should really be a starting point for virtually any and every consideration this committee makes; that is, that there has been a tradeoff.

It goes one further, that when we are talking about confirming or strengthening or reinforcing that concept of tradeoff as compared to—nobody has even come close to talking about—a reintroduction of tort rights, we have to be all that much more cautious.

If any member of this committee can identify any individual who has thoroughly analysed the history of worker's compensation, the current status of the law and some, if not all, of the many proposals that have been made to amend or reform it, it would seem that Mr Weiler would be the person. Granted, there is published material, but the written word oftentimes does not fully or satisfactorily explain concepts that have been proposed or generated or developed.

The opportunity not only to have Professor Weiler address this committee with respect to the specific issue of dual award—Really, that is all the motion is, to brief this committee on his vision of a dual award system. I suspect I might be wasting everybody's time, because it would seem to me that there would not be a single member of this committee who would not welcome Professor Weiler here. It is too bad one cannot take a straw vote in advance and find out where people stand so one does not have to address these types of motions.

I am sure everybody here would want the opportunity, first, to meet Professor Weiler and share his company and, second, to hear a very smart person address the issue of a dual award system. That has been one of the areas of great contention, and there have been a lot of things said about it, in many cases by people—I think it was Wittgenstein who said: "Whereof one does not know, thereof one should remain silent."

Mrs Sullivan: It seems like a good idea to me.

Mr Kormos: Well, I consider myself fortunate for having recalled that it was Wittgenstein who said that. But it seems to me that much of what has been said about the dual award system has been said by people who do not know what they are talking about. Now, I am not talking about the dual award system right now; I am talking about the need to have input into this committee from people who do know, from people who do understand it, from people who do understand it in the context of understanding the whole history of the system and who are so sensitive to the tradeoff that is occurring.

I have to hark back to that, because it is just an incredible thing that by virtue of the workers' compensation system we have denied a very fundamental right—it is certainly not a privilege but a right—to seek redress by these injured workers. In exchange for that, these people are bound, framed, caught up in a system that is not open-ended. What that means is that we have to exercise the greatest care, the greatest caution.

Somebody commented earlier that Mr Weiler may not even want to come here. He may be so disgusted with what has gone on so far that he would not be caught within 100 miles of this committee.

Mr Brown: I would not be surprised to hear that.

Miss Martel: He means since 1980, not just recently.

Mr Kormos: He may say, "I read the votes and I see the decisions that are made time after time by the committee." He may say, "I thought more highly of the Liberals than I do now." He may not understand that there have been some real changes taking place. In any event, he may not even want to come, but hopefully he would, and the motion is to invite Mr Weiler to appear.

The important word is to "brief" this committee. We are not talking about lengthy interrogation. Obviously, that is not what is contemplated by the motion. The motion merely contemplates the opportunity to hear from Professor Weiler—and, Lord knows, we would be blessed to have him here—hopefully to understand a little better some of the insights he has acquired over the years in what amounts to volumes of study and research.

As a matter of fact, what this brings to mind is the comment about not hiding one's light under a bushel. Not to invite Professor Weiler would be really the gravest of sins, and that would be to hide one's light under a bushel. It would be to not give this committee an opportunity to avail itself of the wisdom, the insights and, quite frankly, some of the personal talents of Professor Weiler: his ability to understand things, his ability to restate complicated things in perhaps a more readily understood way.

What I am fearful of is that some members of this committee do not understand the dual award system as it is proposed. What I am fearful of is that this whole process of confirming the denial of tort rights to injured workers by virtue of these amendments to the act and then the amendments to the amendments is, of course, confirming what has gone on historically, but if it is done without a clear understanding of the dual award system—some committee members might suspect that the motive in inviting Professor Weiler would be to start all over at point one again.

The Vice-Chairman: Excuse me, Mr Kormos, I think that issue was dealt with in the debate on the point of order.

Mr Kormos: But some members of the committee might think there was something insidious happening here, that this was sort of getting in the back door when you could not get in the front door. It remains that once again the motion is so very properly worded, so very cleverly worded; it says, "to brief this committee on his vision of a dual award system."

1710

Miss Martel: I do not think it was all that clever.

Mr Kormos: Well, intelligent. To brief this committee on his vision of a dual award system. It really is such a narrow matter—

Mrs Sullivan: On a point of order, Mr Chairman: I believe the member is being unduly repetitive and repeating arguments and statements that were made before.

The Vice-Chairman: I am sure the committee would not want to limit debate but I would admonish the member once again not to be repetitive but to deal as directly and concisely as possible with the motion.

Mr Kormos: I have been admonished twice. It reminds me of the story about the newlyweds in the horse and buggy. This is an old joke.

Miss Martel: We have all heard it.

The Vice-Chairman: This relates to the motion?

Mr Kormos: Yes, Mr Chairman. As the newlyweds travel along in the horse and buggy, there is a fork in the road. The husband pulls the reins to the left and the horse keeps going straight. He pulls the horse to a stop, gets out, looks at the horse and says, "That is once."

They get back in the buggy, they clop along again and this time a turn to the right is required. The driver, this fellow with his wife sitting beside him, pulls the reins on his right—this is a horrible joke, a horrible story—and the horse keeps going straight. He stops the horse, gets out, looks at the horse and says, "That is twice."

They carry on and they are still clopping along with the little buggy behind them and once again there is a left turn that has to be made. The fellow pulls on the left rein and the horse keeps going straight. He pulls the horse to a stop, reaches under the seat and pulls out a pistol, walks up to the horse and says, "That is three times." Then he shoots the horse between the eyes—and I am not going to tell the rest of the story.

Interjections.

Mr McGuigan: Mr Tatham, you have a confrère.

Mr Kormos: In any event, his wife protested the shooting of the horse. I am not going to tell the rest of that story.

Mrs Sullivan: It was probably a sexist story.

Mr Kormos: It is an old joke.

Miss Martel: It sounds sexist to me.

Mr Kormos: It is no more sexist than Shakespeare is racist.

The Vice-Chairman: Could you please address your remarks to the motion?

Mr Kormos: I am sorry, Mr Chairman. So we are talking about a motion that proposes really what could amount to a very brief commentary on the part of Mr Weiler; one which is restricted to a discussion of his vision of a dual award system. In my view, if committee members want to take the point of view that Mr Weiler is a dummy; that he does not know what he is talking about; that he should not be teaching law at Harvard; that all his work so far is for naught; that the stuff he had written in 1980 and 1986 is trash, then maybe by turning down this motion they could be sending Professor Weiler that very message. Talk about being admonished; maybe he would feel admonished, having this committee deny this motion. He could say: "Fine, I will stay in the United States; Toronto will not see me again. If that is how they feel about my hard work, so be it."

That is why I find it strange that I am even speaking to the motion, because—



Mrs Sullivan: So do we.

Mr Kormos: So be it. The record could show that I am taking this matter very seriously and that other people here seem not to care as strongly as I do about the committee arriving at the right decision. For those people who would not support this motion, there could be the point of view that, as I say, maybe Professor Weiler is not telling the truth about the number of degrees he has and so on; that they are not interested in degrees for that reason.

The Vice-Chairman: Excuse me, Mr Kormos. I do not think Mr Weiler's qualifications are a matter of debate. Prior to your joining the debate, I think Mr Brown indicated that the Liberals conceded that he was, indeed, an expert.

Mr Kormos: Fine. That permits me—

Miss Martel: Do you not think that was a point of view?

The Vice-Chairman: It was a point of view. That is right.

Mr Kormos: That then requires me to move on to consideration of the other reason people might not want Professor Weiler to come here. Your having told me what you have, Mr Chairman—that Mr Brown at the very least recognizes Mr Weiler's fine credentials and the fact that he is a smart guy, not a stupid person, in that he is well read and well learned in the area this committee is trying to make determinations on—maybe it really is a matter of hiding the light under the bushel. Maybe people do not want to hear from him. Maybe people do not want to hear what he has to say about the dual award system. Maybe the vision of Professor Weiler about the dual award system conflicts so thoroughly with what is being told in strange ways to the public, workers, injured workers, labour unions and community legal clinics across this province.

It seems just incredible. Surely, the members of this committee would not want to conceal the truth, the members of this committee would want things to be wide open, would want to have all the expert input they could possibly receive, knowing that the decisions they are going to be making are going to impact on so many people's lives, not just on injured workers themselves but of course on employers, bureaucrats and technocrats who work for the Workers' Compensation Board, the children of injured workers, the wives of injured workers, the neighbours and friends of injured workers, people they meet casually on the street, and on whole communities.

I am encouraging and urging this committee to adopt the motion and would encourage them to vote in favour of it.

The Vice-Chairman: I am glad you made that clear.

Mr McGuigan: I would be more apt to listen to sweet reason if it were not for the fact that the leader of the party has made it very clear that the purpose of this whole action is to delay and obstruct, which was reinforced by the member for Algoma (Mr Wildman) yesterday.

If, for instance, we acceded to this request, what would the next request be? What other expert is there? There is no limit to the number of people out there for whom we could either reopen this hearing in a very broad scope or reopen it by inviting every last person in the world to come here who might have something to say about it.



We have a job to do and that is to get along with the clause-by-clause reading of this bill, to pass this bill and to bring the benefits of this bill to those people out there who are waiting for it.

Mr Kormos: On a point of order, Mr Chairman: For Mr McGuigan to suggest that people are out there are waiting for it is to suggest that banks are out there waiting to be robbed.

The Vice-Chairman: Order. This may be a point of view, I suppose, but it is not a point of order.

Mr McGuigan: We have a job to do and we would like to see that done and not have this endless parade of motions that we know are simply going to be followed by other motions and so on. I would notify you from this side that we are opposed to the motion.

1720

The Vice-Chairman: Miss Martel will close the debate.

Miss Martel: Thank you. I appreciate the comments made by Mr McGuigan. My concern, in moving in this committee that we have Paul Weiler come before us, was that he is an expert in this field in particular, whether I agree with his ideas or not. I do not think anyone can doubt or refute that the new system proposed to compensate for permanent partial disabilities is a major section in this bill. It is one of three key sections in this bill, and it purports to make a fundamental change in the way permanent disabilities have been compensated for in this province for literally years.

It really purports to change the whole basis right from 1915 when people were given a pension on an ongoing basis to recognize their disability. I think we are dealing with a fundamental pivot in this legislation, if I can say. It is a principle, albeit one of three, but a principle that certainly does propose to change in a dramatic way what has gone on in this province since this act was first established.

I know the minister has said that permanent disabilities make up only X per cent of the claims that are handled at the board, but there are some 116,000 people on pension in this province now and certainly more to come. I think the changes we propose will affect a significant number of people who are hurt in the future and who, as a consequence of their injury, then end up suffering from a permanent disability which they will suffer from for the rest of their lives. How we deal with that and how we adequately compensate those people is certainly one of the underlying principles of this bill and a very important principle it is.

Therefore, to have someone before us who, I guess you could say, is the father of the dual award system would be important to members of this committee. Mr Weiler, whether I agree with him or not, has certainly put a tremendous amount of work into his review of how jurisdictions in this country should compensate for permanent disability. I think it can be said that he went at that task with a great deal of determination, certainly to provide the fullest information possible to whatever Minister of Labour was in power at the time, whether it was Mr Elgie in 1980 or Mr Wrye in 1986.

We are dealing with someone who has spent at least six years—the last report was done in 1986—studying not only the systems that were in place in Canada but also spent some time dealing with jurisdictions in the United

States and some of the models that were in place there, in particular in Florida. If you go through his first book, you will see that he makes reference to Florida and the system and whether or not it is system that is viable and should be imported into Canada and into Ontario.

We are dealing with someone who, as a resource, has a fundamental grasp on how he views the system should operate to compensate people with permanent disabilities, given the number of years and the amount of time that he has dealt with it. In inviting him to come and speak before us as a committee, what we are dealing with is someone certainly who did not look at compensation merely as a passerby or with some kind of vague interest in the system but actually was paid—I do not know how much money but was certainly well paid—to look seriously at what alternatives we should incorporate here in Ontario. We are dealing with a person who knows his business and who could bring to this committee a great deal of expertise.

I think in terms of his vision of the system, which also makes up a second part of the motion, what I am concerned with is whether it is his view that the system he would like to see in place in Ontario will or will not in fact increase costs. Will it remain cost-neutral, as the Minister of Labour has said on many occasions and as the Workers' Compensation Board said when it was before us during the committee hearings in February?

I think it is important to note that I have made mention already of my concern, a concern that was reiterated during the course of the hearings, that to put this system into place will not keep it cost-neutral because we are going to have to increase the number of people in administrative positions in order to ensure that the system would operate efficiently and effectively.

I note what Professor Weiler has said. Given what the minister has said and what the board has said—that is, that the system would remain cost-neutral, and members will remember that the board came in with all kinds of charts, etc, and tried to show us how it would end up being the same amount of money put out—I point you to what Professor Weiler has said, which is that there are two problems. In his view, the costs of administration were going to increase. He says in his first book—

Interjection.

The Vice-Chairman: Order, please. Miss Martel has the floor.

Miss Martel: He says in his first book, when he talks about the system:

"The administrative problem, in turn, has two sides to it. On the one hand, the need to establish and review the scope of actual wage loss adds another task, an onerous one, to a board already burdened by an annual case load which is nearing the half-million mark. From the point of view of an injured worker, he loses automatic entitlement to a fixed pension which is independent of the board."

But he certainly does say, "The creation of a more sophisticated form of permanent partial disability benefits would expand the need for administrative judgement by the board," and then goes on to say that, in his view, "It would be a small price to pay, but we would need additional administrative staff." That may also increase the administrative discretion, but there would be a need for increased staff.

It was the opinion of Weiler—who has suggested this system and who probably had, I would think, some hard data to base his decision on—that the system would cost more even in administrative terms alone, and on the other hand—

Mrs Sullivan: On a point of order, Mr Chairman: The member is repeating herself again and I wonder if she could take cognizance of the rules as in the standing orders.

The Vice-Chairman: Miss Martel, I would admonish you to keep your comments as brief as possible and not be repetitive.

Miss Martel: Thank you, Mr Chairman. I think it is important to note—and maybe people do not want to deal with this particular question—that we certainly have a disagreement in terms of whether the system is going to cost more or whether it is not. Given that Weiler was the person who first adopted this system or first moved that we should incorporate this system into this province and that he has said it will cost more just in terms of administration, then we certainly have a conflict between what he has said and what the minister has said.

I, for one, given that we do not have any information from the minister, any kind of cost analysis, any kind of cost studies whatsoever, even though that was requested even during the debate on second reading by Alan Pope, think we should see what Mr Weiler has which brought him to the conclusion that the system was going to cost more, because there are certainly employers out there who have been told repeatedly that their costs are not going to increase, that their costs are going to remain neutral. You will recall that many of those employers also requested information from the minister before we proceeded with any clause-by-clause—

Mrs Sullivan: On a point of order, Mr Chairman: The member is referring extensively to debates that have taken place in the House and I believe, therefore, is out of order.

The Vice-Chairman: No, that is not out of order. A member can refer to other debates and to comments that have been made by other members in debates. It might be out of order if the member were quoting from herself, but I do not believe she is doing that.

Miss Martel: No, I would never purport to consider myself an employer and quote in that regard.

I was talking about the employers who came before this committee, who urged the committee to get before the committee some of the cost analysis that minister was using when he talked about the dual award system, because it was their concern, as it is mine, that not all of the information has been given and these people are going to see an increase in their assessments because, in fact, the system is not going to be cost-neutral as the minister has claimed. I think that is an important consideration for this committee.

Certainly, if the ministry has not provided it to us, then I hope that someone can give us that information, and who better, in my mind, to give us that information than an individual who himself first looked seriously at the idea of having a dual award system; who would have, I would think, taken great care to gather all the necessary information to—

Mr McGuigan: It seems to me we are debating the bill. We are not debating the reasons for inviting Professor Weiler.



The Vice-Chairman: I think Miss Martel has attempted to explain why she thinks Mr Weiler's comments would be useful to the committee, but I was just about to request the mover of the motion to try to wind up her comments since she does appear to be becoming somewhat repetitive.

Miss Martel: It seems to me that we do have an expert in this field and there has been great debate about this system from both sides. We certainly have someone who would have looked not only at jurisdictions in Canada but in other countries to see what possible effect it could have here and whether that would be beneficial.

I would like him to come before us to give us any information he has, especially in terms of costs. I would like to hear from him why he has altered his position somewhat, as he has, since he did his first report in 1980, because during that time he also continued to study the issue and, finally, if he feels that the position that the minister has taken with regard to the dual award system present in Bill 162 reflects the vision that he had of a dual award system when he first developed the concept in 1980.

If it does, I would like to hear from him why he thinks it is an appropriate system to move to; why he feels, if it replaces the present system, it will make the system more fair and more just, and what information he can give to us to support that basis. I do not believe that this committee has been given any evidence or hard data to support whether the change will be cost-neutral or not or whether it will be more fair and less arbitrary.

The Vice-Chairman: Are there any other comments on the motion? Are we ready for the question? Are you asking for time, Miss Martel?

Miss Martel: Yes.

The Vice-Chairman: The vote will be at 5:53 pm.

The committee recessed at 1734.

1755

The Vice-Chairman: The motion has been moved by Miss Martel that the committee direct the clerk to invite Paul Weiler to appear before the resources development committee to brief this committee on his vision of a dual award system. All in favour?

Miss Martel: Recorded vote.

The committee divided on Miss Martel's motion, which was negatived on the following vote:

Ayes

Kormos, Martel.

Nays

Brown, Lipsett, McGuigan, Roberts, Sullivan, Tatham.

Ayes 2; nays 6.

The Vice-Chairman: Are you prepared to now move to clause-by-clause on Bill 162?



Mr Kormos: I have a motion.

The Vice-Chairman: What is your motion?

Mr Kormos: I move that the committee direct the clerk to invite the chairman of the Quebec WCB to brief the committee on its system of reinstatement and rehabilitation.

The Vice-Chairman: I am going to rule that motion out of order for the reason that previously Miss Martel moved a motion that the committee invite the appropriate representatives from Quebec, including representatives from the Quebec workers' compensation board, to the committee and that motion was ruled out of order because it related to a previous motion.

I would say that the matter of inviting a representative of the Quebec workers' compensation board, the chairman of the board specifically, has been dealt with by the committee.

Mr Kormos: May I speak?

The Vice-Chairman: Are you challenging my ruling?

Mr Kormos: No, I am asking you first if I may speak to it.

Miss Roberts: No, you cannot challenge.

Mr Kormos: Be quiet. It is up to the chairman to do.

Miss Roberts: No, it is not.

The Vice-Chairman: Order. You cannot debate my ruling, so you cannot speak to my ruling unless you are challenging my ruling. Then you have the right to explain your reasons for the challenge.

Mr Kormos: That is the next step, thank you. As a result of those comments, I challenge the chair.

The Vice-Chairman: I will ask Mr McGuigan to take the chair and to give Mr Kormos the opportunity to explain his reasons.

Interjections.

The Vice-Chairman: Sorry, I do not have to do that.

I will ask you to state clearly your reasons for—

Mrs Sullivan: And succinctly.

The Vice-Chairman: Yes, succinctly state your reasons for the challenge.

Miss Roberts: In three minutes or less.

Mr Kormos: Three and a half minutes or less.

I understand what the chairman is saying. It is no criticism whatsoever of the drafter of the motion that the chairman referred to, but you have to acknowledge that that motion entails inviting appropriate representatives from

Quebec: the trade union movement, employers, the Ministry of Labour and the Quebec WCB. As I understand, when he ruled that out of order, the chairman made reference to the motion from yesterday that was defeated that talked about interest groups, representatives of injured workers, labour unions and employer groups.

One can only conclude that the elements or the parts of the Shelley Martel motion from earlier today that generated the adverse ruling from the chairman were trade union movements, because that means labour unions, and employers, because that is mentioned in the motion of yesterday, and that it was those two groups that the chairman found offensive in the motion as it was presented earlier.

The motion before you now, Mr Chairman, has nothing to do with any of those groups that are referred to in the motion from yesterday. It has nothing whatsoever to do with those groups. As I say, there is no criticism of the drafter of the motion earlier today, but perhaps that is one of the problems that one encounters when there is one of these all-encompassing, soup-to-nuts type of motions, even when there is a vote on it.

Let's assume for the briefest of moments that the chairman had not ruled that it was out of order but rather had permitted the Shelley Martel motion and that it had been struck down by the committee, by virtue of voting. What then? Somebody could say, just as I moved now, "I move that the committee invite the Quebec WCB or the director of the Quebec WCB here."

The Vice-Chairman: Order. The question must be put. The question to be decided by the committee is, shall the chairman's ruling be upheld? Are you ready for the vote? All in favour? Six. Opposed? Two.

Agreed to.

The Vice-Chairman: We will reconvene after routine proceedings tomorrow afternoon.

The committee adjourned at 1801.



CA20N  
XC13  
-578

R-7

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT, 1989

THURSDAY, 15 JUNE 1989





STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)  
VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)  
Brown, Michael A. (Algoma-Manitoulin L)  
Dietsch, Michael M. (St. Catharines-Brock L)  
Lipsett, Ron (Grey L)  
Marland, Margaret (Mississauga South PC)  
Martel, Shelley (Sudbury East NDP)  
McGuigan, James F. (Essex-Kent L)  
Stoner, Norah (Durham West L)  
Tatham, Charlie (Oxford L)  
Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Charlton, Brian A. (Hamilton Mountain NDP) for Mr Laughren  
Polsinelli, Claudio (Yorkview L) for Mr McGuigan  
Roberts, Marietta L. D. (Elgin L) for Mrs Stoner  
Sullivan, Barbara (Halton Centre L) for Mr Dietsch

Also taking part:

Mackenzie, Bob (Hamilton East NDP)  
Philip, Ed (Etobicoke-Rexdale NDP)

Clerk: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, 15 June 1989

The committee met at 1532 in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

The Vice-Chairman: I see a quorum. The committee will proceed with Bill 162, An Act to amend the Workers' Compensation Act. Are you ready to proceed with clause-by-clause?

Miss Martel: No. Are you going to start now?

The Vice-Chairman: Yes.

Miss Martel: Are you checking on the Tories?

The Vice-Chairman: The clerk has already checked the Tories and they are not coming.

Miss Martel: All right. Then I have a point of order, Mr Chairman.

The Vice-Chairman: A point of order? What could be out of order?

Miss Martel: I thought you had started and asked if the committee was ready to begin clause-by-clause.

The Vice-Chairman: Yes.

Miss Martel: And I said no.

The Vice-Chairman: Do you have another matter you would like us to deal with? Proceed.

Miss Martel: Thank you. I have another motion I would like to move and have the committee deal with this afternoon. It parallels in some ways the resolution that the House dealt with this morning. I can read it into the record now and then the clerk can get copies and I can deal with it.

Given that the overwhelming majority of groups and individuals which appeared before the resource development committee recommended that the government scrap Bill 162, I move that this committee recommend to the Minister of Labour that said Bill 162 be withdrawn, and a real process of consultation with the stakeholders begin, to provide true reform to workers' compensation in Ontario.

The Vice-Chairman: The clerk is going to get the motion run off for members. In the meantime, perhaps you could proceed to speak to your motion, Miss Martel.

Miss Martel: Actually, Mr Mackenzie is going to start, because he cannot stay all afternoon.

The Vice-Chairman: You wish to yield the floor to Mr Mackenzie?

Mr Mackenzie: Can I have a copy of the motion?

The Vice-Chairman: It is being run off right now. We do not have a copy; it is being run off. We can adjourn for a couple of minutes until it is run off for all members, if you wish.

Mr Mackenzie: I would like to have a copy of it.

The Vice-Chairman: Okay, agreed.

The committee recessed at 1535.

1540

The Vice-Chairman: The clerk is distributing the motion.

Miss Martel moves that this committee recommend to the Minister of Labour that Bill 162 be withdrawn, and a real process of consultation with the stakeholders begin, to provide true reform to the workers' compensation system in Ontario.

Miss Martel is yielding the floor to Mr Mackenzie.

Mr Mackenzie: I only have a few minutes before I have to leave for a meeting and a dinner of the Steelworkers of America District 6 area council in Hamilton this evening. I was there this morning, along with my leader and two or three of my colleagues; it is a record gathering for the steelworkers in Ontario: 576 delegates registered as of when we spoke to them this morning.

They had a number of things on their agenda, but one of them was Bill 162. The reason I speak in support of the motion of my colleague is that I am relatively sure you would not find one of the 576 delegates there who was not concerned with this bill and hoping there could be a process of genuine consultation, and I think that is backed up.

Whether or not one accepts our argument that the final draft of the bill we got from the minister also contained numerous amendments, to be very frank with you, while the amendments were supposed to reflect some of the arguments that were made by people against this bill—the minister said in effect he was responding to those arguments—there are serious questions, in my opinion, about just how much they really do respond to the arguments being made.

Nevertheless, it should not just be critics on this particular committee who are making that kind of argument. It seems to me there is a substantial enough change, according to the minister himself and the number of amendments, that the amendments should be explained to the constituency group. They have taken a quick look at what we have been able to provide them.

They were not, as you know, consulted on the changes to the act to begin with. We now have an act we are asked to look at in this committee on a clause-by-clause basis that has a large number of additional amendments, so there has been even less consultation, I guess you can say, than there was before we started on this particular piece of legislation. I think it is only fair that we have some real consultation and move to deal with the concerns that I think have been so ably expressed by people before this committee, with the problems that will be inherited with this new bill and the changes it brings about.

I do not know how you say to the overwhelming majority, probably 80 or 85 per cent of all of the groups that were before us, "We have a bill that's going to help you," when they do not think so, and where you have a final copy of the bill that comes in for clause-by-clause debate before this House and before this committee which has numerous amendments which, as I said earlier, the minister says accommodate some of the concerns that were raised. We do not think they do, but I think that is immaterial at this point in time.

It is a question of whether it is legitimate to have some of the other groups take a look at the amendments. If their view is that they do not meet the need, then we should have consultation on a bill that will answer the problems that anybody who is dealing with workers' compensation knows exist in the current legislation.

I have difficulty, as I have had from day one, understanding how we bring in legislation to correct problems we all know exist with workers' compensation and in correcting them upset and aggravate to a large degree the entire working clientele that uses it, who say: "This is simply not meeting our needs. It's going to make it worse, not better," and then have a minister telling us he has listened to the complaints that have been raised by the constituents around this province, bringing in a large number of amendments saying they meet the complaints that have been raised, and then decide we can, at this time, proceed without any consultation at all. It compounds the lack of consultation the client group has had in this bill to begin with.

I can tell you that one of the things raised with me this morning—they are well aware of this from the Ontario Federation of Labour campaign and their own concern over the legislation—by probably 10 or 12 individual delegates, as well as being voiced from the floor while we were there at the conference was: "What can we do and how can we do something about stopping, changing or improving Bill 162?"

Very frankly and bluntly, what we have had to say was that we are not sure if we can do anything if this government is hell-bent on shoving through this bill as it is, or the bill as it is with amendments. But what do the amendments do? We do not think they make that much of a change. We agree with them, but nobody has had a chance on an individual basis to question the minister.

I suppose, as a committee, we can do that in clause-by-clause hearings on this particular legislation, but it is not designed primarily—although we have a great concern with the legislation—to salve our consciences or supply a need for us. I hope like hell it does not happen, but maybe one of us will need it somewhere along the way in our coming life. There may even be members in this House, but none that I know of, who already have a Workers' Compensation Board pension. I do not know of any. The number of us it is likely to help is extremely small, but we know the number of people out in the community who are going to be using it. We are up into the hundreds of thousands of injuries a year, so surely this group should have some real input into a bill that will resolve their needs.

I guess it is stretching a little but I could not help but be impressed with a call I also got today from the president of the federation, Gord Wilson, who was asking just exactly where we were on this particular bill we are debating. He said: "I've got something of interest to you. I've just sent down with one of our staff a letter you might be interested in. Maybe you can use it to appeal to the Premier." So I said, "Send it down."

It is a letter from the Premier (Mr Peterson) to Gord Wilson, sent on 5



June, fairly recently. There was an interesting sentence in the letter. It is only four very short paragraphs. It simply reads:

"Please accept my heartiest best wishes on this, the occasion of your 50th birthday.

"In honour of this momentous event"—a little levity here—"I wanted to declare this day a provincial holiday, but your friends in the NDP wouldn't let the bells stop ringing long enough to pass the legislation. Maybe we'll try again when you hit 60.

"Looking back on your record of achievement in the labour movement, it's difficult to believe that you're only turning 50. You can already point to a long list of accomplishments in making Ontario a safer and better place for workers." "A safer and better place" is what he highlights.

"I can't think of anyone in the labour movement whose opinions and advice I value more highly. Once again, please accept my fondest wishes on your reaching the half-century mark. Best wishes, David Peterson."

As Gord said: "Maybe you could say to the Premier, if I'm so highly thought of and can give the best advice of anybody in the labour movement, you can reiterate the position we've taken that there are drastic changes needed in this bill. It has to be revamped. It's no good the way it is." If he values his opinions that highly, maybe the Liberal members should go back and ask the Premier whether Mr Wilson's expertise, so glowingly acknowledged by the Premier, is not good enough reason to take a serious look at the amendment that has been moved by my colleague.

I think the debate in the House that was triggered by my colleague was an important one. You can say what you like about our opposition to Bill 162 and the frustration the government members may have with this legislation, but whether you agree with us or not, you cannot deny the arguments that were presented to this committee in the hearings around Ontario; that is, that other than some of the business community—and I might underline there, not all but some of the business community—you have absolutely no support for this legislation as it stands. We do not think you have any for it with the numerous amendments the Minister of Labour (Mr Sorbara) has brought in.

Not only was labour not consulted on the original bill, it has not been consulted on whether any of the many amendments the minister has moved or has included in the compendium and the bill we have received do in fact meet any of the very many complaints it had.

1550

On a personal basis, the other thing I have real difficulty with—I say this with sincerity to my colleagues in the other party here. Once again, regardless of whatever kinds of instructions or views they have themselves, I do not know whether or not they are all as solidly in line with this legislation as they have indicated before this committee. There is no question that it has been a whip type of bill in terms of something they want through. I think some of them, at least, know there are concerns.

I was amazed at the reaction of some of the members who met with the recent delegation from Local 1005 in my community, who said, "Well, we don't know whether or not all of the concerns you state have any real validity, but we have been convinced that the bill is worth trying." I can tell you that was a meeting with three of the local area Liberal members.

It certainly raises the question for me that perhaps they did not want to say to the delegation that was there, which was solidly opposing the bill, that there may really be something wrong with it. They were not ready to give it a total endorsement, but they were certainly indicating that they were going to be supporting the bill.

The personal difficulty I have, and I raise it frankly with the members here, is that if we are right at all on this bill—I am absolutely convinced we are or we would not have put up the fight we have on this bill and we would not have had every single group we have had in Ontario supporting us on this bill, whether it is unions, injured workers, legal clinics or you name it—this bill will come back to haunt this government, probably more so a year or two down the road as the effects start to take place, and a woman like the woman up in Rainy River who had her leg ripped off finds out that if they are able to get her back on the job, she has a one-time payment of \$17,000 instead of a \$404-a-month pension for life.

When those things start happening out there, this is going to dog this government for one hell of a long time. It is not something that is going to go away; it is something that is going to get worse from now right through until you have to fight another election.

In straight political terms, and I can be as crass as anybody, maybe I should be saying hurrah about that. The reason I am not is that there is one hell of a lot of workers who are going to get hurt in the meantime as a result of this legislation.

That being the case, and I think few people deny that the adjustments are going to be major, why in God's name can we not take a serious look, with consultation this time on this particular piece of legislation? Surely to goodness it is not too late to simply say, "Maybe people who are working on the likes of a Bill 162, who are working, really, on workers' compensation, have things to tell us "

In my community alone we have two or three people almost full-time at McQuesten Legal and Community Services. We do a lot of work in my office on it, and I have been trying to cut back, because it has been a tremendous part of the load. We have worker advisers in our area with whom the appointments are now six and eight months before they can really do an investigation. We have two full-time people and a committee of about four others in Local 1005 and there are at least five other unions I know of that have a full-time workers' compensation officer. As it stands at the moment, we are subsidizing the province and the government where we should not have to subsidize them in terms of handling Workers' Compensation Board cases.

We have a bill now that in our opinion is going to make it worse for some of the serious cases. There probably will not be a lot of change in the everyday, run of the mill claims that go to the board, but in some of the serious cases, we are going to have much more difficulty.

It is going to haunt us for a long time. We have almost everybody who is going to be working with it angry at it. They feel they were denied consultation. As I said right at the beginning, we now have the additional factor of a considerable number of wording changes that nobody has had any consultation about, nobody whatsoever in the labour movement, which have strictly come from the minister, saying it is his response to the presentations that were made to us.

We may or may not be competent in terms of workers' compensation. We have certainly done a hell of a lot of it. I am totally satisfied that some of our members and my colleague in particular do know the bill, and everything we have looked at, including a fairly careful study of the amendments that are part of the new package, indicates to us that they are wording changes or a readjustment of the words or the sections and that there is very little in the way of any hard changes in what the original bill outlined.

That being the case, I think it would be almost criminal to proceed at this point in time with the current piece of legislation. I would hope my colleagues on this committee would give some serious thought to a serious effort to revise a bill that does need revising, that needs improving or simplifying. It sure as hell does not need the additional burdens we are going to hand to workers with this current piece of legislation.

I think it only makes sense: Every once in a while, you have to back off and take a look at something. I guess that is what my colleague is telling us, to back off and take a serious look at this particular piece of legislation. Let's do it and let's do it right.

My final comment is that the last time we made some adjustments, we did not do everything we wanted at that time. We set up the worker advisers and we made a number of changes in the legislation. They were steps in the right direction; they were universally applauded. They probably did more to outline just how right we were, quite frankly, about the number of problems that were there, simply because it did not take long before the workload, even for those workers' advisers, skyrocketed.

So, there were a lot of people who needed the service and were not getting it, despite all of the volunteer and some of the ministry people who might have been working on this. The need was underlined. Is it because that need was underlined that we now see this effort to cut back on the benefits to people? I do not know. I would hate to think that is the reasoning in the current government position.

It is a serious request to do a bill and do it right. Probably, by now the very debate we have had on this legislation and the fact that it has opened minds—I can tell you it has opened minds in the labour movement as well, which at one time would not have done anything in terms of changing workers' compensation, but which now will take a look at other suggestions, including some form of universal insurance. That is probably not the route we are ready to go as yet, but surely, let's go back and take a look at the bill itself and not proceed with what is going to be a mistake that is going to cost the government for one heck of a long time to come.

I would like to go on at some length beyond that, but I have a meeting in Hamilton I have to be at in about an hour and 25 minutes.

The Vice-Chairman: Thank you. Are there comments on Miss Martel's motion? Mr. Charlton.

Mr Charlton: The parliamentary assistant is shaking her head in, I think, pending agony. She served with me on the select committee on energy and it probably has some relationship to that relationship.

I would like to take a few minutes to talk about the motion that is before you from my perspective, as someone who is, like many of the members of our caucus, a representative of an industrial area and of a riding in which my



constituency office has an extremely heavy case load of workers' compensation; a riding where the frustrations we felt over the course of the 12 years since I have been a member are to some extent reflected in this legislation and to some extent exacerbated by it.

The motion calls for the withdrawal of Bill 162. There are a number of good reasons why this committee should consider advising the Minister of Labour to do precisely that. In my comments, I am going to use a couple of analogies that at least some members of this committee are familiar with. Although Mr Polsinelli is not here at the moment, those of you who hear my comments could consult with him in terms of what I have said, just to confirm the perspective I have tried to put on this.

#### 1600

For me and, hopefully, for most fairminded people in this province, the test of a good piece of legislation in a situation where there are two opposing sides, as there are in the case of Bill 162, is this.

On one side, you have the business community in Ontario that pays the shot for compensation, which has for some considerable number of years been complaining about the assessment rates it is required to pay to the Workers' Compensation Board fund, and on the other side you have working people in general and, more specifically, workers who have been injured at some time in the past and who have had experience with the workers' compensation system and its failure to really live up to its intended purpose, which is to compensate.

One of the tests of a good piece of legislation in a case like that is not to find your legislation supported by some on one side, although in this case not all of the business community supports this piece of legislation. The only support comes from the one side of the debate. The other side of the debate is absolutely and categorically opposed to this piece of legislation. Right off the top that should say to a government that it has missed the mark in terms of finding a balance.

The analogy I wanted to use with you is the pay equity legislation we dealt with in 1986 in this Legislature and in a committee of this Legislature. I served on that committee and made specific reference to Mr Polsinelli because he also served with us on that committee. That piece of legislation was similar to this one to the extent that there were two apparently diametrically opposed sides.

On one side were the employers of the province saying, "We don't discriminate; women are not underpaid for the work they do," and on the other side the women's groups and trade unions, the female workforce of Ontario, saying, "We are discriminated against and we're not paid fairly for the work we do."

That legislation was not wholly acceptable to either side, nor was either side in that debate prepared to totally reject that piece of legislation. Those who would take the time to follow the proceedings around that piece of legislation would find that although New Democrats and Tories moved amendment after amendment and women's groups and trade unions recommended amendment after amendment, and the other side did as well, the chambers of commerce, industrial associations and small-business associations all took positions for changes that needed to be made to make the legislation more acceptable to them. But nobody was prepared to reject that piece of legislation as totally unacceptable; everybody saw some benefits and some gains in that piece of legislation.



That is one of the first and primary tests a government has to put a piece of legislation to when it is legislation that tries to address discrepancies and mediate between two opposing points of view. This legislation fails miserably in that respect.

I will just repeat what I said at the outset. This legislation has no balance in terms of its support or its acceptance. It is partly accepted by one side of the debate and totally rejected by those on the other side. The unfortunate part of that in this particular case is that if it passes, those who are most directly affected by both the legislation and by the workers' compensation system, whatever that ends up being, are those who have been injured. Those who get affected most severely are those who have been so severely injured that they likely have lost their normal ability to perform work, at least the ability they had up until that point in their lives, and who have likely already suffered dramatic setbacks as a result of their work-related injury. This legislation will inevitably impose much greater hardship on them as a result.

The second test of a piece of legislation which has been well drafted is legislation which, when you have finished reading it, you understand clearly for what it is, what it does and what it will accomplish. Taking the other side of that comment, the downside, when you get a piece of legislation which attempts to put in place principles, as in the case of this bill, rights, benefits, any number of other things, which then includes clauses which in effect negate whatever the bill professed to provide, you can be sure that the piece of legislation is not good legislation. The harder legislation is to clearly interpret, the worse it will be as law.

What has been raised by this party, both in the House and in this committee, and by groups ad nauseam during the hearings is the discretion of the board and the clauses in this bill that grant further discretion to the board which will in effect negate the things the bill claims to deal with. Those are the clauses which make this bill unworkable and unamendable, because the government has essentially said to us, "Those clauses will remain."

I am one of those firm believers in the fact that you cannot ignore the past and you have to learn lessons from the mistakes you make. We all make them. I make them and each and every one of you makes them. Governments make them as well.

I will go back to what I said at the outset. As one of those members of this House whose constituency office handles a huge case load of compensation cases, one of the lessons I have learned from the past is the lesson about giving discretion to the board to determine any number of matters. Whenever that discretion has been allowed, it has degenerated into abuse and, in many instances, just total confusion. Where one case is dealt with one way, another case is dealt with another way, depending on the adjudicator, the claims officer, the pensions adjudicator or whoever it happens to be that you get in front of. Where you have allowed a discretion, you bend a benefit. Some get it and some do not, when they all should or all should not.

To end up with a piece of legislation that further stimulates that kind of inappropriate unfairness and unnecessary unfairness in a system that was designed to compensate and assist people—people who, the more serious their injury, as I have already said, the more substantive their loss is likely to be—to allow that kind of system, which is supposed to be assisting those who are least able to assist themselves, to become unfair and, in this case, ultimately unfairer, is just not an acceptable way for a Legislature to proceed in terms of making a law.

1610

We had an altercation in the House just the other day—I believe it was Tuesday afternoon—where the chairman of one of our committees reported a bill back from the committee. Members rose in the House, one from our party and one from the Conservative Party, to protest the committee report of that bill because that morning, after the committee's review of the bill had been completed, committee members had made available to them a letter from a judge, whose name I cannot recall, who is part of the Ontario Law Reform Commission. In fact, I think he is the chairman of the law reform commission. He is a judge who has considerable experience in the area and who, in effect, had important and relevant comments to make about that piece of legislation.

In the incident that I refer to, for the purposes of expediency, the government agreed to refer the bill to committee of the whole House so that the matters dealt with in the judge's letter could be dealt with in committee of the whole House.

The Vice-Chairman: Just to assist the member for Hamilton Mountain, I would remind him that the motion placed by Miss Martel is not for the committee to report back to the House but rather to make a recommendation to the ministry.

Mr Charlton: That is just what I was coming to.

What should have happened in the case of the bill to which I was referring and the report from the committee to the House—because that piece of legislation is an important piece of legislation which will become law and will ultimately affect thousands of Ontarians, and we have a responsibility to do a good job in the legislative process—is that the bill should have been referred back to the committee for further consideration.

In this case, the motion before us is asking that this matter be referred back to the minister and that the bill be withdrawn for further consideration.

It is obvious to me that, although the bill is not acceptable in any fashion to both sides of this debate—there is one side that has totally rejected this piece of legislation—whatever consultative process the minister thinks he went through in the development of this bill and whatever consultative process gave him input that ended up on his desk and the desk of his legislative counsel, his legal advisers and his workers' compensation experts, that consultation and that input have obviously not happened and impacted in a balanced fashion in the Ministry of Labour and in the drafting process that produced Bill 162.

One of the reasons to have public hearings is to determine whether, when you have drafted legislation, you have in fact accomplished what you thought you were trying to do. If you failed, it does not mean you did not try; maybe it just means you failed, and we all do fail from time to time.

But the hearing process clearly told us that on this bill, in terms of how it was drafted, the process of consultation and understanding that consultation and interpreting that consultation into legislative language has failed and that we need, therefore, to try again to do it right.

It makes no sense for this committee to do it again. Obviously, the committee does not want to, anyway. The responsibility ultimately does lie in the Ministry of Labour to do the job right.

I cannot conceive of any circumstance where I consult with both sides in a dispute and come to the conclusion, as the Minister of Labour (Mr Sorbara) seems to have, that there are problems in the workers' compensation system that cause unfairnesses for injured workers—and he has used those terms in any number of statements he has made in the House—and then produce a piece of legislation which injured workers decry unanimously and still stand up and believe that I have done the job of consultation and assessing that consultation properly.

Every group which came before this committee that represented working people, that represented injured workers, that represented legal clinics, where the lawyers in the legal clinics have to deal with the application of workers' compensation legislation on a daily basis, and even those presentations that happened to have come from MPPs and constituency offices, all unanimously opposed Bill 162.

I was at a meeting just about three weeks ago with the injured workers' group in Hamilton, which also made a presentation to this committee. Interestingly, there were two Liberals at the meeting. Neither of them is a provincial member; both happen to be aldermen in the city of Hamilton.

One of those two aldermen also worked as an injured workers' consultant, as an injured workers' representative in terms of their appeals, prior to his election as alderman. It might be interesting for those Liberals on this committee to hear that both of those Liberal aldermen in the city of Hamilton—one of whom was the Liberal candidate against me in 1985, as a matter of fact—are adamantly opposed to Bill 162. One has extensive experience with the Workers' Compensation Board and one is gaining it fairly quickly.

The reason they are so adamantly opposed to it is because they understand how the compensation system works and they understand what the impact of this legislation will ultimately be on injured workers in Ontario.

Mr Drury, who is one of the two aldermen in question, who worked as an advocate for injured workers, has said loudly and clearly and publicly—and he was one of those on the Hamilton city council who voted to send a resolution to this government opposing Bill 162; a resolution which was also passed unanimously by that council—that this legislation must be stopped.

Mr Brown: Yeah, meat charts are better.

Mr Charlton: This legislation, unfortunately, does not eliminate the meat chart. It just uses it in a slightly different fashion. It is time the member for Algoma-Manitowlin (Mr Brown) understood that. Bill 162 does not eliminate the meat chart. It slightly changes the way in which the board will use the meat chart. That is all it does.

At any rate, my colleague's motion for this committee to recommend to the minister that the bill be withdrawn and for this committee to recommend to the minister that he then proceed to further consultation with all of the parties involved is the only appropriate way to proceed when we find ourselves in a situation with a bill that was attempting to find a balance between the concerns of the business community about the costs of compensation in this province and the concerns of injured workers about the adequacy and the fairness of compensation received under the Workers' Compensation Board legislation and through the Workers' Compensation Board.



1620

When we find that the bill has missed the mark in terms of finding that balance—and I do not think anybody on this committee can dispute that we have missed the balance; when we have one side in absolute, total opposition to the bill, there cannot be any balance in it—the only appropriate way to go is to go back into the process and try once again to find that balance.

For those reasons, I support my colleague's motion here today and will vote accordingly when the question is put.

Mr Philip: I would like to support Miss Martel's motion. I think when you look at any kind of adjudication system or quasi-judicial body, and that is what the Workers' Compensation Board is, you are trying to set a balance between interests. What we have with the Workers' Compensation Board is an organization that really has not satisfied the interests of either employers or employees over the years. We now have a bill that clearly does not satisfy the interests of at least one of the parties, although we have had some employers who have expressed opposition to this legislation.

In my experience on this committee—and I admit that I have only substituted briefly on the committee—certainly in the hearings that I have participated in, all of the worker groups and all of the advocates on behalf of workers were opposed.

In my own riding, the community information and legal services office is clearly opposed to this bill. They think it is going to worsen their case, and they are quite concerned. They have pointed out that their increase in revenue from the Attorney General (Mr Scott) this year is less than the rate of inflation, yet this legislation is going to increase the amount of time they have to spend in dealing with injured workers and is simply going to increase their overhead. At the present time they have over 300 cases. I handle over 300 cases, and I think this is going to greatly increase my workload and that of my staff.

The community information and legal services office is not affiliated with any political party, and therefore it is not expressing a political point of view. It is expressing a purely independent legal point of view on behalf of the people it is representing.

There was a long discussion on our local community channel on this matter in which representatives of the CILS and the minister discussed it. I believe Miss Martel was part of that discussion. She came out to Etobicoke to deal with it. As she will verify, fairly clearly, the advocates of the workers say that this bill is not going to improve things; it is going to make things a lot worse.

It concerns me also that this government, not just on this matter but on so many other matters, brings in a program that has, without any consultation—

Mr Brown: Point of order.

The Vice-Chairman: Excuse me. I am sorry, Mr Philip. Did you have a point of order, Mr Brown?

Mr Brown: Maybe we could restrict it to this motion.

The Vice-Chairman: Mr Philip, the motion is to recommend to the



minister that the bill be withdrawn and that a process of consultation be developed. I would ask you to keep your remarks to that.

Mr Philip: I think I have indicated that it should be withdrawn. I have indicated that one of the reasons it should be withdrawn is that all of the people who are affected by it are opposed to it. What I was going to do, since Mr Brown is quite concerned about the word "consultation," was to deal with the next item of consultation. That is clearly in the motion and I am sure will therefore be in order. I would like to read to Mr Brown, Mr Lipsett and anyone else who wants to listen, including you, Mr Chairman—

Mr Brown: And all within earshot.

The Vice-Chairman: Order.

Mr Philip: I am sorry, but if Mr Brown is going make interjections, I hope he will interject a little louder.

The Vice-Chairman: Proceed, Mr Philip. You have the floor.

Mr Brown: I did not really want to interrupt.

Mr Philip: I would really like to hear what he had to say.

The Vice-Chairman: Order, please.

Miss Martel: Come on, settle down. It's almost the weekend.

Mr Philip: As Miss Martel will point out, they do not have a cranky chairman in the standing committee on public accounts. I do not know why they have one in this committee.

Miss Martel: Right on. That's true.

The Vice-Chairman: Order. I would hope that you would direct your comments to the chair. We are all ears for your comments re consultation.

Mr Philip: Okay. Regarding consultation, as I was pointing out earlier, the Minister of Labour claims that he has consulted and it is the same kind of consultation that the former Solicitor General, the member for London South (Mrs E. J. Smith), said that she had done with another labour matter, namely Sunday working. As in that committee, when we get out into the field we find that the representatives of the workers have not been consulted.

The union leaders across the province dispute the claim that Greg Sorbara consulted them adequately before drafting the proposed provisions to the Workers' Compensation Act. A list of meetings released by the minister's office says Greg Sorbara discussed the new legislation with Ontario Federation of Labour President Gord Wilson on 3 May 1988, but Mr Wilson was attending a Canadian Labour Congress convention in Vancouver on that date. If he consulted with him on that date, then he has certainly found a new form of metaphysics, because he has found a way of being in two places at one time.

Miss Martel: Maybe it was Bell long distance. Who knows?

Mr Philip: Perhaps it was Bell long distance. In any case, also on the list was a brief appearance that Mr Sorbara made on 1 June 1988 at a

protest staged outside the Legislature, which is not exactly a consultation process. Any of us who have participated in that kind of forum realize it is not exactly the kind of forum that leads to consensus-building—if I may use that term—and facilitates a meeting of minds. It is certainly a way of meeting the minds of the media, but not meeting the minds of the people you are trying to stretch out some kind of agreement with.

The Windsor Star obtained a list from members of the minister's office staff and they described it as, "a list of consultations in error, Mr Sorbara says, but he defends the government's handling of workers' compensation reform, adding, 'I think that we have had a good, long discussion and it is time for the government to act.'"

Mr Sorbara's list indicates that the minister had 27 consultations with labour organizations between 14 November—

The Vice-Chairman:

Mrs Sullivan: On a point of order, Mr Chairman: I find the arguments Mr Philip is putting forward interesting, but I do not see how they relate to the motion before us. I wonder if he could refer to the motion.

The Vice-Chairman: Do you want to speak to the point of order, Mr Philip?

Mr Philip: On the point of order, maybe Mrs Sullivan would like to read the motion and then it will be self-evident to her.

1630

The Vice-Chairman: The motion does request the committee to recommend to the minister that the bill be withdrawn and that consultation with the stakeholders be carried out. My understanding of what Mr Philip is doing is talking about whether consultation has indeed already taken place. I would hope that he will be concise.

Mr Philip: I intend to be very concise, because I do not plan on speaking for more than an hour and a half. As someone who has served five terms in this Legislature with me, you know that an hour and a half is concise for me. It is purely relative.

As I was trying to point out—I would not want Mrs Sullivan to miss this, as she was out of the room. I realize smokers have these problems at times, and I have empathy for people who have various types of habits they have to take care of—

Mrs Sullivan: Does going to the bathroom count?

Mr Philip: If she was in the bathroom having a smoke, that is perfectly—

The Vice-Chairman: Order, please.

Mrs Sullivan: Are you allowed to smoke in there?

Mr Philip: I am sure the new legislation will take care of at least one of those habits. I hope it is the one that will not affect me.

The Vice-Chairman: I am sure the parliamentary assistant was out consulting.

Mr Philip: Okay, that is fine.

The Vice-Chairman: If we could get back to the consultations—

Mr Philip: I am sure that if she was consulting she should teach Mr Sorbara a lesson, because he has not consulted with the workers and that is the point I have been making.

Mr Brown: We concede that you have made that point.

Mr Philip: What do they call it in the Greek dramas? Is it the prologue? I am about to begin the prologue. I am sure I will eventually get into the first—

Mrs Sullivan: About to begin to commence the first act?

Mr Philip: There are 12 acts in this drama.

The Vice-Chairman: I would request that you speak to the motion.

Mr Philip: I intend to speak to this motion until such time as committee chairmen are paid the same wages as parliamentary assistants, so I will continue.

The Vice-Chairman: I might point out that vice-chairmen are not paid anything, but that is another matter. Could you please speak to the motion?

Mr Philip: Vice-chairmen rarely do anything.

Miss Martel: That is why he is cranky. That thought keeps coming to him.

Mr Philip: I would like to point out that there were a number of groups that appeared before the committee. In each case, these groups said they had not been consulted. The essence of this motion is that there was inadequate consultation or no consultation before the bill was introduced and therefore the bill should be withdrawn. We should go back and consult with these people.

For example, IAMAW and IAMAW Local 1120 pointed out that the committee should tell the government to withdraw—I will use their words—"this iniquitous piece of legislation, and develop a program of real reform for workers' compensation in this province."

CUPE, Ottawa-Carleton, said: "This legislation was developed and introduced without consultation with injured workers or trade unions. It does not meet the needs of Ontario workers and must be withdrawn."

OPSEU, Ottawa-Carleton, said, "Withdraw Bill 162 and clear the way for real workers' compensation reform in Ontario." In other words, clear the way for a proper consultation process and we are willing to work with the government to develop something worth while.

ECWU said: "Bill 162 is no solution to the myriad of problems besetting the workers' compensation system in Ontario. It simply adds fuel to the fire

by tilting the delicate balance of fairness within the system away from the injured workers it is supposed to serve. It will inject more complexity into the system and introduce new opportunities for conflict, both of which will bring it one step closer to eventual collapse."

CUPW said, "The government should act now to withdraw Bill 162 and to make real reform of the compensation system a priority to benefit injured workers, not jeopardize their recovery and reintegration into the workforce."

Teamsters Local 419; CPU 49, 238, et al; CPU 38 and 41; IWA 2693; CPU 39 and 257; UTU 537; CPU 34 and 73; SDLC and ECWU 914; OPSEU Kitchener-Waterloo; and the RRDCLC said, "Withdraw the bill and try again."

Mr Brown: It would be helpful if we knew what the letters meant.

Mr Philip: If you like, I could start the list over again and use the full titles.

The Vice-Chairman: Perhaps you could inform the committee, for the record, what you are quoting from.

Mr Philip: I am quoting from the legislative research document, in which the legislative researcher went through the various briefs and picked out—

The Vice-Chairman: In that case, the members can consult that document to find out what the various acronyms stand for.

Mr Brown: In that case we already have that information, so it would not be necessary for him to repeat it.

Mr Philip: You obviously have not read it, or you would be voting for the—

Mr Brown: That is a false assumption.

The Vice-Chairman: Order. Proceed. You have the floor, Mr Philip.

Mr Philip: Thank you, Mr Chairman. I realize more and more as I sit here that I made a good decision in voting for you as caucus chairman. You are a true healer, a true synthesizer, a person who can bring together opposing forces in a manner that could be analogous to St Francis of Assisi but is not.

The Vice-Chairman: Thank you very much. Could you please speak to the motion?

Mr Philip: Okay. The OVIWC said: "The bill is a disaster. It fails to address the Minna-Majesky task force report and will reduce drastically the benefits received by injured workers." They wanted to withdraw the bill.

The PDLC and the WRLC said, "The entire bill should be scrapped and the Ministry of Labour should return to the drawing board to bring forth fair and just legislation to benefit injured workers and companies alike."

CUPE of Timmins and the SEU 210 said, "Scrap Bill 162 and, in consultation with the labour movement, injured worker groups and others, put together meaningful amendments which would ensure fairness, not only to those workers injured in the future but to those already injured and currently suffering under the present system."



Cyr pointed out: "Withdraw Bill 162 and replace it with one that guarantees rights to rehabilitation and lets workers make the key decisions. The bill should also pressure large employers (ie, government) to provide alternate employment. The bill should also cover workers who have to work in small, short-lived companies. Moreover, the wage-loss system should recognize the realities of the north."

"Bill 162 does not meet the needs of workers and must be withdrawn," in the words of PSAC, Ottawa-Carleton; WOSH; and the NHWU 37.

Mr Lipsett: On a point of order, Mr Chairman: It seems to me there is something in the standing orders about monotonous, verbatim from a report or something.

1640

The Vice-Chairman: There is no rule against being boring. There is a rule against being repetitive, but I would hope the member would attempt to avoid repetition.

Mr Philip: I do not think I have repeated something; I have repeated different groups. Different groups have come up with the same conclusion; for a variety of reasons many of them are the same. But I think the various groups that have appeared and that have asked that this bill be withdrawn should have the right to have their views read into Hansard in a way that anyone who is interested will see. What I am doing is trying to demonstrate the overwhelming support for the concept contained in Miss Martel's motion, namely, that the bill be withdrawn and that there be a consultation process.

The Vice-Chairman: Proceed.

Mr Philip: All that these groups are saying is that they have not been consulted. The basic thing is that they are willing to co-operate if they are consulted. The only way to go is to withdraw the present legislation and let's get back to work at doing something they are consulted about.

CUPE, Metropolitan Toronto district council, Mr Hosein; UTU 917; OPSEU; OLBEU, Ottawa-Carleton; LAW; CUPE 82; LDLC; OPSEU, Windsor; and CAW 89 said, "The proposed act in its present form should be withdrawn."

Mrs Sullivan: On a point of order, Mr Chairman: As this document the member is reading from was prepared by legislative research staff for the use of the committee and all members of the committee have it, I think that perhaps if the document were simply tabled—or is it already considered tabled?—then the information contained in it could be more clearly presented than having the member read the document with the confusion of symbols and letters.

The Vice-Chairman: The document is available to all members of the committee. Perhaps the member could highlight the significant points he is trying to make from the document rather than reading it verbatim.

Mr Philip: The problem, and we have faced this in the Legislature before, is that simply tabling a document does not get printed in Hansard. Reading the document does. There is a fairly elaborate procedural method one can go on. We are not the United States Congress, where you can simply go in and deposit a speech and have it tabled in Hansard. The only way of getting a document like this printed in Hansard is through a unanimous consent of the

Legislature, which requires a motion in the House, as I understand it. I have done that on one occasion, when I had 23 pages of tables that the Chairman of Management Board did not want me to read verbatim into the record. That requires a motion in the House.

What I am trying to do is to show the overwhelming support for Miss Martel's motion.

The Vice-Chairman: For the information of the members, the bell is for a quorum call in the House.

I understand what you are attempting to do. The document, though, is a synopsis, as I understand it, of presentations that were already made to the committee. Therefore, much of what the member is reading is already on the record in Hansard. Again, I would request that the member highlight to make his point rather than simply reading verbatim.

Mr Philip: Let me just read a couple of others, because there are pages of the same kinds of comments. Then perhaps I can summarize. For example, USWA, Toronto, pointed out: "A totally new piece of legislation must be drafted which will make progressive changes to the Ontario Workers' Compensation Act. We feel that the Ontario government should enter into a comprehensive consultative process along the lines of a tripartite discussion so that injured workers' concerns will be truly reflective of the changes."

If you look at all of these, and I am talking about hundreds of presentations, you are talking about groups that say they have not been consulted and that they want to have input, that they are willing to work with the government but that this bill does not do it. I am trying to point out that if you have any quasi-judicial body, you have to have the support of the people you are adjudicating. You cannot just have the support of one side. In this case, the minister cannot even boast of having the support of one side, if the employers are one side. I do not consider that they are. As a former management consultant, I think it is in the interests of management to have healthy workers who feel they are getting a straight deal, and that in instances where things go wrong that there is a net and a support mechanism. That is what makes successful companies operate. I could take you through any one of a number of companies that are highly successful that use a highly consultative process.

I do not want to talk about one that originated in Canada in my riding, but I think perhaps United Parcel Service is a good example of where a union and management working together can develop a company that is highly profitable and highly successful. We have seen that. In contrast, if we look at one of their competitors, namely, Canada Post Corp, we see a company where management has not adequately consulted workers, has not worked with them, and we see the opposite kinds of problems, along with the resulting lack of productivity that comes when things are imposed on people rather than where they have participation in the decisions being made about them.

So this motion says: "Minister, you haven't consulted. Let's withdraw it."

It is fairly clear now that we have had some 340 presentations, that there is not one worker in this province, one representative of workers, be it a union or community information and legal service office, that is actually in support of this. Whether the law is a good one or a bad one, if you do not have the support of the people it is affecting, it is not going to work. I

hold that to be true whether it is the support of management or the support of workers. You cannot just put a system in place, because it will simply bog down.

All my colleague is saying is: "Look, we now realize that the minister may have thought he consulted in the chats or whatever he had before he introduced the legislation, but it's fairly evident that the people who are affected don't feel they have been consulted. They don't feel this is good legislation. They're willing to work with the minister, but for heaven's sake, withdraw it and let's start over again, or at least start a couple of steps back and look at what needs to be done."

That is why I ask that the members of this committee seriously say: "There's nothing wrong with admitting, whether this is a good bill or a bad bill, that it doesn't have the support of a large number of people. Because of that, it's not going to work. Whether it's good or bad, it's not going to work. Let's withdraw it and let's start over again."

The Vice-Chairman: Thank you. Is there anyone else who would like to speak to Miss Martel's motion?

1650

Miss Martel: Thank you, Mr Chairman. Also, thank you to some of my colleagues who came in this afternoon to support this.

Let me begin by saying that I will probably deal with the motion in two parts, first with the section concerning consultation, which has been noticeably lacking from this bill and, second, with the recommendation that the bill be withdrawn. I think it is important that I break it down into both, because both issues are significant to this whole question and to how this bill has unwound.

Many of you may or may not have been in the House this morning, but I felt it important enough to reiterate the points that were raised this morning and have my colleagues in to deal with other issues as well, whether they used experiences in their own ridings or groups within their own ridings that have talked to them about this bill and why they think it should be withdrawn. In some of these cases, many of those people would not have had the opportunity to come before the committee hearings in order to state their case, and many of them may not have been in a position to submit a written brief to this committee.

Let me deal first with the question of consultation. It seems to me that it would be appropriate to put this into a historical context more than anything else for members who, like myself, have not been here all that long, or as long as both of my colleagues the chairman and Mr Philip.

I think it is important to go back and take a look at the last time there was a major attempt to reform workers' compensation in this province. I go back to when the former government was in power, that is, the Conservative government, and when Dr Bob Elgie was Minister of Labour.

He requested that Paul Weiler undertake a review of the system. We had a bit of a discussion yesterday about some of the reviews Weiler did in terms of compensation for permanent partial disabilities. When that study was complete, and when the then Tory government decided it was prepared to move ahead with some kind of reform of the system, it did not choose the route that was chosen by this Minister of Labour.



In fact, this Minister of Labour delivered to us on 20 January 1988 a fairly extensive bill outlining the government's ideas on where it wanted to go with workers' compensation. The bill had been numbered; it was set to go. There we were, left to deal with it as a group, either for or against it, and take it from there.

I point out to you that Dr Elgie did an interesting thing, which I think the current Minister of Labour would have been far better off to follow. In fact, he did two things.

First, when he received Paul Weiler's report about compensation of permanent disabilities, he had that circulated to labour, management and other interested parties and he had meetings and written responses on that particular question, the question of the dual award system alone.

When he finished with that, he took the responses he had received and looked at other areas in which the government wanted to move in relation to workers' compensation, and he put them together in this white paper on workers' compensation. It was not a bill. It was not numbered. It was an outline of what the government intended to do. In many cases, the intention was written up in legislative language so that members could deal adequately with it, but in fact it was not a piece of government legislation; it was a draft to be put out to the public to be studied, to get input and information on, in order that the government could then come back and put together a package of proposals in the form of a bill which would have had input and consultation from the public in Ontario and from those groups that were most interested in how workers' compensation should be reformed.

I think it is important to note what he said: "The government is persuaded that reforms along the lines recommended in the Weiler report are required. However, before introducing a bill in the Legislature, it has been decided to circulate this white paper, setting out 21 substantive revisions which the government believes may be appropriate and illustrating how these revisions would apply to the day-to-day administration of claims."

That is fairly significant, because what he did, and what the present Minister of Labour did not do, was that he actually gave time for the groups interested in compensation to come before the Legislature and make their case and then allow for the government to change its position in terms of some of the proposals so that it more adequately reflected the spirit and the sense and the sentiment in the community regarding reform.

The white paper went to the standing committee on resources development. That committee was charged with holding public hearings, to have discussions around the province on the white paper, and that is what that group eventually did during 1982 and 1983.

A consequence of that type of consultation, which was far more appropriate to all the groups concerned, because it was not an actual bill they were dealing with but merely government proposals where they actually felt they had a chance to influence the system and the thinking of the minister at the time, it is important to note that the government did listen to what some of those concerns were.

There was a great deal of concern around the proposed dual award system that was discussed in the white paper. So much so—because it was opposed by labour, by the legal clinics, by their advocates, by the New Democratic Party, by the Liberals at that time, I might point out—that because there was so



much opposition to it, the government withdrew its recommendations with regard to the dual award system.

When Bill 101 was finally introduced into the House in 1984, the dual award system was not part of that package, and it was not part of that package because the government of the day had the sense to realize that it did not have any type of consensus on this issue and it was better to withdraw it and start again and see if there was a better system that could be put in place.

When the bill finally went through, and we supported most sections of that bill, if I am correct, there were some very good things in that bill, some very good things that came out of a long, long process of consultation with groups that had a real interest in how workers' compensation had to be reformed.

I suggest that if you compare what happened on that piece of legislation, which, I repeat, was the last time we have had a major number of amendments on workers' compensation, the whole manner in which that was handled was far different from the way the present Minister of Labour handled this bill. Herein lies a great deal of the problem and the legitimate charges that there was no consultation about this bill before it was introduced, because there was not, not on the specific provisions.

That leaves me to deal with the minister's statement that there has been a great deal of consultation about workers' compensation for many years now and the statement in the ministry's own paper outlining this bill that there have been consultations going on since 1985, after the government commissioned a study on how best to revise the system. You get the sense from him that what Bill 162 is is a culmination of literally years and years of discussion among all the groups, employers included, on how best to change the three areas that the bill tackles in particular: reinstatement, rehabilitation and the dual award system.

The minister, in the newspaper article my colleague quoted from the Windsor Star, 13 May, said to the Windsor Star people, "Don't tell me there's been no broadly based, government-oriented, government-initiated discussion." I have to tell you the minister is completely incorrect, because there has not been broad, government-oriented or -initiated discussion on the changes put into Bill 162.

1700

There have really been two questions that have been the focal point of workers' compensation for a number of years. If I go back to the discussion we had yesterday, we were talking about the three Weiler reports, where he, on behalf of the government of the day—whichever government was in power at the time—tried to convince that government to bring into force in Ontario a pension system that was radically different from the one we operate under now.

There is no doubt that there has been a great deal of discussion about the Weiler proposal for a dual award system in this province. In fact, his first report in 1980 and even his most recent report in 1986 have been widely circulated. That is correct; the ministry is right when it says that.

I come into conflict with the minister's statement that "there has been a great deal of discussion and consultation and this is the result," because if you go back and check the briefs submitted by labour in 1980, before the public hearings in 1982-83, and again in 1986 with the third report by Weiler,

you find out quite quickly that the trade union movement, injured workers' groups and legal clinics have all consistently opposed the dual award system presented by Weiler and that there has never been any consensus whatsoever as to what would be an appropriate, effective and workable dual award system in this province.

The employers, of course, have agreed with it, and that is fine; they are on one side of it and we are on the other, and everyone knows that. But to try to suggest, as the minister has done, that the dual award system that appears here is somehow the brainchild or the result of consensus among all these groups that are interested in compensation is grossly incorrect. They have never agreed with the dual award systems that have been presented, either in the white paper or in Bill 162. Members will know that during the course of the hearing, we were told again and again and again that labour and injured workers' groups and clinics did not agree with the dual award system as presented.

That is the first point about government discussion on compensation issues. The second point, one that I again raised this morning, concerns rehabilitation. There is no doubt that the question of rehabilitation has been debated in this province for at least four years. The debate first began because reports came out of facilities like Downsview and cases were raised by people who were working with compensation, members in this House, that there was something seriously wrong with the manner and method in which rehabilitation was being provided by the Workers' Compensation Board.

Things were so bad that the minister of the day, Bill Wrye, to his credit, did initiate the Majesky-Minna task force. They were charged specifically with the task of investigating how rehabilitation was being provided, if it was adequate, what kind of changes had to be made in order to ensure that workers who needed rehabilitation got rehabilitation, and that the services they were provided or were going to be provided would be appropriate to their specific condition in order to get them back into productive lives in the workforce.

That group spent a great deal of time and money and when it finished, its report as well, like the Weiler reports, was sent out to a large number of groups for public input, response and comment. I can tell you, after reading some of the trade union briefs in this regard too, that there was unanimous consent among the trade union movement, the legal clinics and the injured workers' groups that the job that had been done by that group was commendable and it was exactly right in condemning the boards with regard to rehabilitation. Finally, all those groups supported the 84 recommendations put forward by Majesky-Minna.

That consensus reached the employer community, and many of you will recall that we did ask several of the employers if they agreed with mandatory rehabilitation, etc, and what their feelings were on it, and they supported the proposals that had been put forward as well.

I do not have to remind members of the committee that that task force was made up of representatives of all the groups that would be most interested in compensation. They did come to a consensus. For the life of me, I cannot understand why this government does not accept those recommendations or why, if it was good enough for all those groups to come to a consensus, the government cannot itself put those recommendations into place as there was unanimous agreement, but in that case the minister has not.

On the two issues on which there has been many years of debate, pensions and rehabilitation, we have had no consensus in the case of pensions and unanimous consensus in the case of rehabilitation, but the consensus was not adopted by the ministry.

It seems to me that for the minister, knowing there was absolutely no consultation about the particulars of this bill, to then say, "Well, we've had years of consultation and this bill is a culmination of all those discussions," is completely incorrect as well. So we are back to square one in that no one had any consultation and the whole approach by the ministry in terms of this bill has really been wrongheaded. They would have been much better to look at what Bob Elgie had done when he was Minister of Labour in this province.

We cannot as a group underestimate the importance of consultation in this process. Workers' compensation is tremendously important to a large portion of this population, not just for those people who are hurt and have to deal with the board on an ongoing basis but for those of us in our offices who do workers' compensation and spend a lot of staff time and resources fighting cases; for all those trade union groups which have full-time health and safety compensation representatives; for the people in the legal clinics who are being paid public money to fight workers' compensation; and for the people in the office of the worker adviser who, again, are being paid with public money to fight against a bureaucracy that is indeed under the direction of the Ministry of Labour.

Those people, and I am just going to leave the employers out of it for a moment, handle workers' compensation claims on a daily basis. They know the act inside and out. They have seen everything, not once or twice but probably many times, and they have a real stake in how the system should be changed, when it should be changed, why it should be changed and what the best and most effective way is to make the changes required.

We are not disputing that the system as it presently stands is in a terrible mess. There is no doubt about it; we all know and we all deal with the cases day after day. But to go ahead and to try to overhaul some sections of the present act in a major way from what we have dealt with up until this point without having the decency of consulting with those people who deal with compensation on an ongoing basis and know it better than anyone else is to my mind really stupid. It is ridiculous that there would not have been any type of consultation with the people who understand the system best.

For the trade union movement in this province, the network of legal clinics and the Union of Injured Workers across the province to stand together and oppose this bill outright says to me that this is a very serious issue for them. They are willing to consult and to deal with the ministry or anyone else on what changes should be, but certainly they have to be asked, and their input should have been sought, because their expertise with regard to compensation cannot be denied.

To leave this group out in the cold and take it upon yourself to go up to the Workers' Compensation Board and draft recommendations with only the board and no one else is in my mind just sheer stupidity. All it does is put all those groups with their backs up against the wall, which is not going to be any good for anyone in the future or be very favourable for the process. It seems so strange to me that on a bill of this significance, which does make some fairly significant changes—and that is not to say that I agree with them, only that they will mean a dramatic change from the way things operate



now to the way they will in the future---to do all this without the benefit of consulting with those kinds of groups is really ridiculous.

I point out that the legal clinics themselves are not a partisan group. They have nothing to gain politically by being out and opposing this particular bill; they are opposing the bill because they do truly believe from their experience that it will cause more harm than good. Surely some of that expertise should have been taken into consideration when drafting the provisions of this particular bill.

1710

I want to deal now with the question of withdrawing Bill 162 and recommending as a committee to the Minister of Labour to withdraw the bill.

I do not think any of us who attended the majority of hearings can deny that in fact the majority of groups who came before us were quite clear and quite specific in their opposition to this bill. Even some of the employer groups that came before us registered some very deep dissatisfaction that they had with the board, in particular regarding increasing board discretion and what that was going to mean to them.

We also received many written submissions, which I know everyone has had a regard to, which indicated opposition to the bill and called upon the government to withdraw the bill as well.

This would not be included in our packages from research, but I see that several councils in the province have also stated their opposition to Bill 162. I have a resolution here from the city of Toronto council which states its opposition to Bill 162 and calls upon the Minister of Labour to withdraw this legislation. That was passed by Toronto city council about three weeks ago.

I have another one here from the regional municipality of Hamilton-Wentworth. They say: "The regional council of Hamilton-Wentworth believes that Bill 162 is unfair to injured workers and will likely increase their reliance on general welfare assistance. Therefore, we ask the government of Ontario and the Minister of Labour to withdraw Bill 162 and to introduce a new bill to amend the Workers' Compensation Act."

Finally, there is this latest one from the city of Thunder Bay. Committee of the whole voted on Monday to ask the Minister of Labour to reconsider Bill 162 and look into the concerns of various groups.

That is three, and I know that the city of Windsor has also passed a resolution opposing this particular piece of legislation, although I do not have that resolution before me.

I think that is a fairly significant group that is opposing the legislation. Not only are they opposing it, but it is important to note that they have said that the bill should be withdrawn altogether. They do not feel the bill can be amended in any way to suit them. They do not feel it can be tinkered with in any way or reworded or reamended or anything else that you want to call it. They think the whole thing is so badly flawed that it should be withdrawn completely and a whole new process begun, with them involved, to write a new bill that will provide some real and meaningful changes to the system.

I point out to members that the coalition that is opposing this bill and



calling for its withdrawal is probably the most significant that has ever been united since 1982-83, when the last changes to workers' compensation were brought before this province. I am told by people who are still in the fight from the last fight, who have been dealing on behalf of workers since then and were involved in all the struggle that went on in 1982-83, that the support against this bill that they have seen this time around is even more significant than in 1983. It has brought a number of groups together that have not been together before. It has received just unanimous support right across the trade union movement, the injured workers' groups and the legal clinics.

I think it is extremely significant that, even since 1983, the group that has gathered together to oppose and call for the withdrawal of this bill is an even more significant group than it was in 1983 when it was opposing the dual award system that was outlined in the white paper. That says to me that surely something is dramatically wrong with this legislation when there is such a large coalition that has moved against it and such a significant coalition in this province.

I do not think it is fair to say, as the minister did at the Corpus conference, that these people are fearmongers or partisan advocates who, if it does not involve more money every time we talk about workers' compensation, are going to be opposed to it. We are talking about some of the finest people who deal with compensation in this province, who have nothing politically to gain themselves. They may or may not support us. They may support the Liberals. I do not know. But they certainly have nothing political to gain by this.

Their concern comes from the work they do with regard to workers' compensation. Surely, to try to exclude them and brush off their opposition and throw up your hands and say that what they have to say means nothing because they are merely fearmongers, I think, is really an inappropriate response for the minister to make.

Those people have legitimate concerns. They have tried to express their concerns in the best way they can. It is unfortunate that this government is really not intent on listening to what they have to say, because if the government was, the bill would have been withdrawn.

I think another reason that the bill should be withdrawn, outside of the total opposition to it from one whole portion of society, is that we have now had the third set of amendments to the bill since it was first introduced on 20 June 1988. We had the amendments on 20 June; we had the second set of amendments on 19 January, and we had the third set of amendments three weeks ago in this committee.

That says to me either that the bill was extremely sloppily written in the first place, and that is probably a good point, or that in fact there are so many problems with it that it would be far, far better for the government merely to take it away and try to start again, because it is obvious that even the people in the ministry themselves cannot be all too happy with it if they felt that it has needed not one but two sets of amendments to the original announcement of the bill in June 1988.

Surely, based upon all we have heard during the course of the hearings, I would have expected some extremely substantial amendments. First, I would have hoped for the withdrawal of the bill, but not thinking that was quite possible, I would have expected some very substantial amendments to be introduced by the minister before we proceeded to clause-by-clause.

I myself was quite surprised at just how flimsy the amendments were that were introduced in here three weeks ago. They in fact did not respond to the major concerns of the people we heard before us: the concerns about mandatory rehabilitation; the concerns about time limitations, which are not in the Ontario Human Rights Code; the concerns about deeming; the concerns about board discretion, which has not been removed in any way, shape or form.

I would have thought that if the minister, for the third time, was going to move some more amendments, he would have at least made some substantial changes which would have reflected what was heard during the course of the hearings. I do not think what we got in here three weeks ago in any way, shape or form—really began to even address the concerns we heard during the course of the public hearings.

I really cannot say, in looking at the package that we got here three weeks ago, that it did anything to undermine the fears of the groups that came before us in opposition or did anything to change their opinion, in fact, to now want to support the bill.

I think you will find, as I did in some of the quick calling about that I did after the amendments were introduced, that those people who oppose this bill continue to oppose it, because in their view, the amendments did nothing. They did not change the direction of this legislation. They did not take into account some of the overwhelming concerns that were raised during the course of the public hearings.

As Brian said earlier when he was in here, I think that it would be a good idea for this committee to take a step back and that it was not such a bad idea in fact to say: "We didn't do it right the first time. We tried to fix it two other times, in January and again here three weeks ago, but the bill does not enjoy any wide support and perhaps it is better for us to take it away and start again."

#### 1720

We do need reform but we need some reform that is based on actual consultation with the groups that are most affected by it. I point out to the committee members that the Tories, in fact, did the same thing. They had a dual award system proposed in the white paper. There was so much opposition to it during the course of the public hearings, both written and by people making verbal presentations, that they did withdraw that section of the white paper. It did not appear when the bill was introduced into the Legislature in 1984.

I do not think it would be such a bad idea for this committee, the resources development committee, to say seriously to the Minister of Labour that we went out during the course of the hearings. It cannot be denied that the overwhelming majority were completely opposed to this bill; they called on this government to withdraw the bill. In fact, even the support that comes from the employers is not substantial support at best, because the employers have some very dramatic concerns that have not been responded to in the latest set of amendments, and it is about time that we did the decent thing, which would be to take this bill and start again.

I know committee members have been angry about the way we have gone on here in the last two weeks and I can appreciate that, but I have a job to do as well.

Mr Tatham: I am not angry.

Miss Martel: Frustrated, sorry. I withdraw "angry" and say "frustrated."

I have to say that after having worked at the Workers' Compensation Board, dealing with compensation in my office and really going through this bill as best I can, I just think it is going to mean tremendous hardship for all kinds of injured workers, those who are hurt now and those who are going to be hurt in future.

When it is not only my effort but also a concerted effort of the trade union movement, of the network of legal clinics and of all the injured workers' groups, surely some of us have some sense and something intelligent to say. We are not all fearmongers. Although I admit I am completely partisan on this issue, but certainly all those people cannot be all wrong.

I am asking this committee once again to do the decent thing, based on what we heard during the course of the hearings and what we have seen in submissions to us, to withdraw the bill so that we can get on with the process of really reforming workers' compensation in a manner that provides for significant and real input on the part of all those people who have an interest in compensation in this province.

The Vice-Chairman: Thank you very much. Did Mrs Sullivan wish to make some comments on behalf of the government?

Mrs Sullivan: No, thank you.

The Vice-Chairman: Are there no other comments by members of the committee with regard to the motion? Are you ready for the question?

Miss Martel: No, I would like some time.

The Vice-Chairman: Are you asking for time?

Miss Martel: Yes, please. Twenty minutes.

The Vice-Chairman: All right. The committee will reconvene for the vote at 5:43 pm.

The committee recessed at 1723.

1744

The Vice-Chairman: I want to apologize to the committee for misreading the clock and almost putting the motion before. It is now time to put the motion.

All in favour of the motion?

Mrs Marland: A recorded vote.

The committee divided on Miss Martel's motion, which was negatived on the following vote:

Ayes

Charlton, Marland, Martel.

Nays

Brown, Lipsett, Polsinelli, Roberts, Sullivan, Tatham.

Ayes 3; nays 6.

The Vice-Chairman: Is the committee prepared to move now to clause-by-clause consideration of Bill 162?

Miss Martel: No.

The Vice-Chairman: Do you have something to put before the committee?

Miss Martel: Yes, I do. I was going to move today that this group actually go to New Zealand and look at its—

Interjection: Are you going to do it?

Miss Martel: I thought I would win that vote. Would it not be marvellous to win one in here?

Interjection: It is interesting. Carry on.

Miss Martel: I knew it: some life, some support. I thought it might be a little humorous on a Thursday afternoon. However, I will not move that today. Sorry.

I do have another motion that I am going to move and we will probably speak to it as well. It is rather long. I will read it into the record.

The Vice-Chairman: Read it into the record, and then you could give it to us in writing.

Miss Martel: Given that the stakeholders at the public hearings admitted they had not been consulted about the provisions of this bill before it was introduced, and given that the Workers' Compensation Reform Advisory Group has already been established to advise the Minister of Labour on workers' compensation matters, I move that this committee recommend to the Minister of Labour that the contents of this bill be dealt with by the advisory group to ensure dialogue with the stakeholders before reform of the workers' compensation system is undertaken.

I have signed that, and basically what I am calling on is for those matters to be dealt with by the green paper committee.

The Vice-Chairman: Miss Martel moves that this committee recommend to the Minister of Labour that the contents of Bill 162 be dealt with by the Workers' Compensation Reform Advisory Group to ensure dialogue with the stakeholders before reform of the compensation system is undertaken.

The import of the motion is that this committee would recommend to the minister that the advisory group on workers' compensation reform have a dialogue with the stakeholders before the House proceed with reform of the compensation system. The motion is in order.

Miss Martel: There may be some committee members who do not know what the Workers' Compensation Reform Advisory Group is.



Mr Polsinelli: Tell us.

Miss Martel: I will.

Miss Roberts: For the record, I think it appropriate that we hear exactly what Miss Martel has to say about this important group.

Miss Martel: Thank you, Miss Roberts. I am glad you are not as cranky as the chairman is.

The Vice-Chairman: Order, please.

Miss Martel: This group has equal representation from the trade union community, with the workers mixed in with the trade union groups, and from the employers. The advisory group is a mixed group of people who were selected by the Minister of Labour to advise him on issues relating to worker's compensation in Ontario.

Members will recall that when Bill 162 was introduced last June, at the end of the amendments the minister also pointed out that he would be establishing such a group in order to get input and dialogue from the respective communities concerning the manner in which compensation matters should be approached in this province.

1750

In November 1988, an order in council was then passed by cabinet which established the same committee. It is interesting to note that the order in council states quite clearly that the minister himself believes it is advisable to obtain the opinions of various representatives of the workplace with respect to workers' compensation. In fact, he is admitting that it would probably be far more appropriate for him to deal with some of the groups interested in workers' compensation rather than being out on a limb on his own, and to get some kind of idea of what the major problems are concerning the system and how both management and labour in this province would like to have some of those issues dealt with.

The order in council established the group to be known as the Workers' Compensation Reform Advisory Group whose purpose it is, I say to the committee members, to advise the minister on this important question of reform. It seems a little strange to me that the minister would announce the creation of this advisory body at the same time that he was announcing amendments to the Workers' Compensation Act, that is, 20 June 1988. It seems to me that if he were truly serious about obtaining information, input, and advice from those groups who are most concerned about compensation in the province, he would have established this body long before he introduced Bill 162 in this House. Why he did not do that I do not know.

I know I said this morning that perhaps he would like to get this one rammed through and then we can deal with other issues as they come up, but in any event, he did not. So we are stuck with Bill 162 and we are stuck on the other hand with an advisory group that is sitting out there dealing with the very questions I think this committee and certainly the minister and members of this House should be concerned with. That is the question of how best to change the system to make it work for all parties concerned.

It seems to me that given that committee has an equal number of representatives from labour and injured workers and representatives from the

employer community, and given that the Ministry of Labour is also represented to advise and oversee the process, it would make inordinate good sense that it be the group that deals with compensation issues. Because we have come to an impasse on this bill, where on the one hand we have employers agreeing with the bill, and on the other all of the rest of the groups totally opposed to it and wanting it withdrawn, then surely it makes some sense to move those matters into the hands of this group.

Certainly, as I said in speaking to our earlier motion, it cannot be said that there was any kind of consultation with any of these groups before this bill was introduced. We now have in place a quasi-judicial body, but a body that in fact represents those groups who are most interested—or most of the groups, because the legal clinics are not represented. Surely it makes more sense to have it deal with some of the very serious issues raised in Bill 162.

I should also point out to the committee that this particular advisory committee has the ability to call expert witnesses and use the expertise of people in the community when dealing with matters related to workers' compensation. This particular group would be in a position, as this committee was not, to hear from people like Paul Weiler about the dual award system and why he thinks it is a good system and if Bill 162 addresses the problems or not.

The group would be able to call Majesky and Minna before it and find out if the recommendations are incorporated in this bill or how we can accommodate their recommendations into a better bill. They would be able to call people like Terry Ison, who is here in Toronto, who was the former chair of the Workers' Compensation Board in British Columbia where they had a dual award system similar to the one proposed here.

So that committee has a very broad mandate to determine issues of importance to both communities in terms of workers' compensation but also the ability to call expert witnesses to advise that group on how to proceed with all the staff resources, money, secretaries, etc, it would require to carry out that function.

Looking at the order in council, because of what it specifically says—which is that that committee is set up to deal with important issues, to deal specifically with how to reform the system—it makes good sense to me, because there is no agreement at all among the interest groups about this bill, that the bill and the contents of it should be sent to this group where it would have far more time and far more input than we would as a committee, and would deal with the very important issues in Bill 162.

I am suggesting to the committee that a far better way to proceed, because we already know there was no consultation with the interest groups on this bill, would be to allow this group which is already set up, which has already met some eight times as a group, and which actually has equal representation from both communities, to address the issues coming out of Bill 162 so that hopefully it can try to find some middle ground and some way to reform the system in a manner that would be acceptable to all the groups, which is not apparent with Bill 162 at present.

Mr Charlton: I have to speak in support of my colleague's motion, and I choose to do so for a couple of very important reasons. I spoke earlier this afternoon on the last motion and I made reference to the compensation cases we deal with in my office. That reminded me of the first time I ran in

1975 and just before the 1975 election, when the chairman of this committee was touring the province with an NDP task force on workers' compensation reform and held hearings in Hamilton in late 1974. This government, the Minister of Labour, has produced Bill 162—although not necessarily by his own hand, at his direction—a bill which does not have a balance in terms of the competing interests between injured workers and the business community in Ontario, which I think is reflected by the advisory committee which was set up last November by the minister. My colleague made a number of references to that committee, but I think it might be useful if I read for you the full context that was set out in the order in council:

"Whereas the Minister of Labour deems it advisable to obtain the opinions of various representatives of the workplace in respect of workers' compensation, there is established a group to be known as the Workers' Compensation Reform Advisory Group to advise the Minister of Labour on the subject of reform to workers' compensation under the Workers' Compensation Act."

It seems to me that Bill 162 is a reform under the Workers' Compensation Act; in fact, the very title of the bill would suggest that. Unfortunately, although the minister has deemed it advisable to get balanced advice from both sides on that issue and he has set up a committee to provide him with that advice, he has not received that advice on this bill.

Bill 162 is a bill that causes obvious problems for one side in that debate; put another way, the side that perhaps has had less money to spend on lawyers and perhaps less talent in terms of eloquent presentation in whatever consultation process the minister indulged in prior to the drafting of this bill. It is a process we are not aware of, so it is hard to comment on, but whatever consultation process he thinks he indulged in prior to drafting this bill has left one side in dismay of the proposed amendments. That does not seem to me to reflect the spirit of what was set out in the order in council to set up this advisory committee on questions of workers' compensation reform. Bill 162, as has been said a number of times—

The Vice-Chairman: Mr Charlton, the big hand is on the 12, so it is 6 o'clock; perhaps you could adjourn your remarks.

Mr Charlton: I will move the adjournment of the debate.

The Vice-Chairman: The committee stands adjourned until after routine proceedings on Monday.

The committee adjourned at 1802.

CA20N  
XC13  
-S78

R-8

STANDING COMMITTEE ON RESOURCES DEVELOPMENT  
WORKERS' COMPENSATION AMENDMENT ACT, 1989  
MONDAY, 19 JUNE 1989





STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Mackenzie, Bob (Hamilton East NDP) for Mr Wildman

Sola, John (Mississauga East L) for Mr Brown

Also taking part:

Sullivan, Barbara (Halton Centre L)

Clerk: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

Witness:

From the Ministry of Labour:

Clarke, Richard, Manager, Policy Branch, Labour Policy and Programs

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 19 June 1989

The committee met at 1533 in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

The Acting Chairman (Mr McGuigan): The member for Hamilton Mountain (Mr Charlton) had the floor. In his absence, we will turn it open. There is no list, so whoever wants to speak, it is available.

Mr Mackenzie: As I understand it, the motion that was moved was a simple one: "That this committee recommend to the Minister of Labour that the contents of the bill be dealt with by the Workers' Compensation Reform Advisory Group to ensure dialogue with the stakeholders before reform of the compensation system is undertaken."

I know that my colleague the member for Hamilton Mountain would have been making the argument that there had been no consultation before this bill was introduced. I think nothing was more firmly underlined in the hearings around this province than that particular point, underlined with double lines, I might say, by just about every union group and every injured workers' group and every legal clinic that deals with workers' compensation problems.

That has been at the heart of the motions that we have moved, the lack of consultation on this particular bill, given the importance that it has to workers and injured workers across this province, an importance that is not lessening, I can tell you, as you attend the various conferences and conventions and council meetings of workers' groups in the province of Ontario. It has been front and centre now at at least three that I have been to in a little better than a week as one of the major issues they are dealing with. I guess the motion itself takes on some added meaning.

I noticed that it was only after Bill 162 was introduced that the minister established the advisory committee for the green paper. The order in council used to establish it says;

"Whereas the Minister of Labour deems it advisable to obtain the opinions of various representatives of the workplace in respect of workers' compensation, there is established a group to be known as the Workers' Compensation Reform Advisory Group, to advise the Minister of Labour on the subject of reform to workers' compensation under the Workers' Compensation Act."

The irony of this, as I am sure you will recognize, whether you want to agree with me or not, is why did not this happen before Bill 162, which certainly makes some fundamental changes to the current Workers' Compensation Act? Now, if we have a bill which has the changes and the concerns that have been expressed—

Mrs Sullivan: Could Mr Mackenzie advise us what document he is reading from?

Mr Mackenzie: The terms, I guess, that the order in council used to establish the committee that is going to look at the so-called green paper that will now be prepared for additional reform of the Workers' Compensation Act.

Mrs Sullivan: Could Mr Mackenzie advise if in that description there is also information which specifically indicates that the advisory committee is to consider post-Bill 162 reforms?

Mr Mackenzie: I do not know whether there is or not but I do not think it is important in terms of the point I am making. The point I am making very clearly is that now the minister is saying it is absolutely vital that we have a committee set up which will allow participation and consultation with all of the stakeholders, but after we have brought in—and I would remind the member for Halton Centre (Mrs Sullivan) if she does not remember this—a bill that has fundamental implications for injured workers in Ontario.

The Acting Chairman: Just on a point of order, I will take that as a point of information.

Mr Mackenzie: So the point I am really making is, why did not this happen before Bill 162? Why were the issues not raised in the bill given to the advisory group to deal with?

I think probably the best answer to that particular question was the answer summed up by the Labour Council of Metropolitan Toronto and York Region in its presentation. They said:

"The intended bias of this legislation, in our opinion, is obvious from the start. If the legislation was sincerely intended to meet the needs of injured workers, why is it that their organizations were not consulted in the drafting of these changes?"

It is completely inappropriate for the minister to say, as he has, that Bill 162 is the result of years of discussions on how to reform the Workers' Compensation Act.

I could go on with additional comments I have here that just underline their case, but I think they have made the point. I would invite, as we have tried to do all through the hearings, government members to tell us and to outline for us the consultation that took place on this legislation which every single group before this committee, I remind you, every workers' group said did not happen. Why then is it appropriate for the minister to say that if there are going to be any further changes to Bill 162, he will want to now consult with a group that includes the stakeholders?

I suggest to you it does not take a heck of a lot of intelligence to understand that some of the damage that the workers think will be done by Bill 162 will not be undone and probably cannot be undone by further consultation. I am simply saying to all of the members in this particular committee that I think an injustice was done in terms of the procedures we went through before Bill 162 surfaced in this Legislature.

I think an injustice is being done not in the minister now saying that this green paper he is going to produce is going to have a group from the stakeholders to study it, but in the very fact that there is a recognition now that that is what should have been done in the first place and was not done and clearly was not done in Ontario.

You can say what you like, but I do not know another piece of legislation with the fundamental impact of Bill 162 that has been treated so cavalierly by a government in terms of input from other groups. The input in terms of the various reports over the years is not the answer to the specific suggestions that are being made in terms of Bill 162. I would simply say to the chairman of the committee and the deputy that I think the mistake is wrong.

1540

I think this one suggestion of the minister alone totally undermines the credibility of the process we went through to get Bill 162, and it is one of the reasons why the response, as members of this committee know, is virtually unanimous. I have yet to find a labour group, an injured workers' group or a legal clinic group in the province that says we can reform the bill or one that says we can amend it or make changes to this particular bill. They say the bill is so lousy it has got to be scrapped.

I personally have said that in the 14 years I have been in this House, it is the second-worst bill I have seen in this Legislature. The only one I would put ahead of it is the price and wage control legislation we had some years ago. In terms of the effect, it certainly will have a tremendous impact on future injured workers in Ontario. It would be a mistake—indeed I think it would be a tragic mistake—for us to continue with this legislation without the kind of input from the stakeholders that is requested in the motion that my colleague the member for Sudbury East (Miss Martel) has introduced.

The Acting Chairman: Thank you. Are there any other speakers?

Miss Martel: I am going to wrap up our side of why we want this motion to pass. I would just like to go back to some of the points raised by the member for Hamilton Mountain, who was here on Thursday with me.

Members will recall that Mr Charlton talked at some length about the signs of good legislation and how he, as a member in this House, looked for good legislation and what milestones or parameters he used to determine if legislation presented by indeed any government was a good piece and would find some support within the population. He said, quite clearly, that a sign of at least a workable bill was that both sides of the argument, or whatever sides were opposed and/or for the bill, were in fact willing to use it as a basis for change.

He gave us the example of the pay equity legislation and clearly pointed out that there were two sides, the employers' and the women's groups, which had some fundamental problems with the legislation. Neither group was in the position of saying:

"This whole thing should be withdrawn completely because it is so bad that we don't even think we can use it as a starting point. We don't want to use it as a starting point because in our opinion it reflects none of the changes that we think are needed or required, and we cannot even begin to use this as a basis and start to build from there."

I think it is important that he pointed that out because even though some of us are new members, we have seen a number of pieces of legislation about which groups, although they were opposed to certain sections of it, have not in fact said that the legislation was so bad that the government should seriously consider withdrawing it and not proceed any further with the changes they had in mind.



I think that speaks to the fundamental problem we have with this bill. Far aside from our partisan approach to it, which everyone recognizes is partisan, there is a large body out there that is fundamentally opposed to this legislation. They have clearly told this government that they cannot even bring themselves to try to deal with it and amend it but that the contents of it are so bad and will change the system so dramatically for the worse for injured workers that they do not even want to use it as a starting point. They cannot accept that it should be the basis from which we work and build upon.

I am reminded of the conversation I had with some members from the Ontario Federation of Labour who met some weeks ago at the request of the minister. He asked them during the course of that meeting what kind of amendments they would accept in order to have this bill dealt with and what changes they would accept so that this bill would be able to proceed. They told him flat out that nothing, no amendments, could be moved, that the whole bill had to be withdrawn, that they had had no participation in it and, on behalf of their members, they felt it should be withdrawn completely.

I think that really speaks to the heart of this question. We have here a piece of legislation that is so bad in the minds of such a large group of people who work every day on behalf of injured workers and have to deal with this lousy system and the board that, in their opinion, after years of studying and working with it, it is going to lead to all kinds of dramatic changes and all those people who are hurt and have to rely on compensation in the future are going to be worse off.

I cannot for the life of me understand why the minister does not understand the consequences of proceeding with a piece of legislation that has been condemned—not just spoken against in a mild sort of manner but out and out condemned—by such a large portion of working people in trade union groups, injured workers' groups, legal clinics, etc, right from the start. Surely any government in a position of having such opposition that is so violently opposed to a particular piece of legislation should seriously consider or reconsider the course of action that has been taken.

In this case, I think we are providing an out for the minister which would be completely acceptable to our party, in my opinion, and surely would be completely acceptable to those groups that opposed this legislation. The trade union movement for one has equal representation with business on the advisory group. They would be more than willing to deal with the question of reform and they have specifically stated that to the minister on many occasions.

Surely this is a face-saving measure that the minister could easily use to take this legislation off the table and send the contents of it to another group, which is already in place, which is already meeting and in a position to draw on expert witnesses to come before it, in a position to deal in a consultative way with all of the major stakeholders and not just with the Ministry of Labour putting a bill together at the Workers' Compensation Board and trying to say that there was consultation and going from there.

We have proposed a way that would be very good for the government to get out of this and to deal with it in a manner that, in my opinion, makes far more sense, by involving those stakeholders who have a real stake, if I must use that word again, in the system and how it operates and who pays for it and how it can work best for everyone.

There was a question raised by the parliamentary assistant as to whether

it was in the document that this bill would be dealt with by the advisory committee, if and when it was passed. I do not know if that is a mandate of that advisory group or not. I only know that the order in council itself was given to members of this committee and that is what my colleague quoted from and indeed what I quoted from during my remarks.

I would point out, though, that if it is part of the mandate of that committee to look at the bill after it has been passed and try to deal with the ramifications after it has been passed, then surely it makes inordinate good sense to do that before we pass the bill and to try to iron out many of the problems and difficulties and things that one side really cannot live with before you pass it and have them pick up the pieces.

I think we are proceeding in a wrong way, putting the cart before the horse, if we expect that the best way to do this is to let them deal with the fallout and try to patch it up from there. That is not the way to put a system into place. It certainly does not speak of any type of effective consultation process and it should not be the way we try to proceed on a major piece of legislation that is really going to affect workers in this province tremendously.

I have moved this motion in the hope that the government members will recognize that we have given the minister a way out of this, that he can surely save some face, because we have all seen that there has been absolutely no consultation on this bill, so it is ridiculous for him to try to say that any more. Certainly it is a measure by which he could save some face, get it off the table and give it to a legitimate group, the stakeholders involved in the process, who among themselves, I would think, would probably come up with a better piece of legislation than the one we have before us.

The Acting Chairman: Are there any other speakers? Hearing none, are we ready for the question? The answer is no. I assume you are asking for 20 minutes, Miss Martel.

Mr Dietsch: Can we have a vote at four? Do we have to wait the 20 minutes every time? I did not hear her ask for anything.

The Acting Chairman: I understand Miss Martel has the right to ask for 20 minutes, so the vote will be at nine after four. We will temporarily suspend the committee.

The committee recessed at 1551.

1612

The Acting Chairman: I call for a vote on the motion.

Miss Martel: Recorded vote, please.

The committee divided on Miss Martel's motion, which was negatived on the following vote:

Ayes

Mackenzie, Martel.

Nays

Dietsch, Lipsett, Stoner, Tatham.

Ayes 2; nays 4.

The Acting Chairman: I assume now we are ready for clause-by-clause consideration of the bill?

Clerk of the Committee: There is a finger up over there.

The Acting Chairman: There is a finger of fate sending us a message?

Miss Martel: Yes. I was going to indicate to the committee that for this afternoon, we are prepared to proceed to clause-by-clause. Note that I said "for this afternoon," though. That was the key.

The Acting Chairman: Thank you very much.

Are there any amendments prior to subsection 1(2)?

Mr Mackenzie: I wonder if we could have an explanation of clause 1(1)(ea).

The Acting Chairman: Is that directed to the—

Mr Mackenzie: Whoever. I just would like to clearly understand exactly what the government is proposing in this bill.

Mrs Sullivan: Yes. In the proposal here, because the bill includes a new definition of remuneration for employment which will be protected by the act, it is important that "contributions for employment benefits" be defined in the act. As you know, in Bill 162 employers are required to maintain contributions to pension plans. The new section 5b, which is proposed as an amendment to the amendment, would require the trustees of multiemployer plans to maintain those benefits, as well.

The view is that some employees are protected now through collective agreements. Bill 162 will ensure that all those covered by the act will receive such protection.

Mr Mackenzie: Could you elaborate a little more on the benefits we are talking about? You have mentioned pension plans.

Mrs Sullivan: Do we need a motion to do this?

The Acting Chairman: Mr Mackenzie was asking for further elaboration.

Miss Martel: On a point of order, Mr Chairman: Before we begin, this is just for clarification. Can I get a sense from you as to how we proceed with this? Do you have to move a motion to deal with this and then open it for questions, and is that how you deal with every single section of this?

The Acting Chairman: I will ask the clerk to explain that.

Miss Martel: Thank you, because I have not dealt with clause-by-clause.

Mr Tatham: Mr Chairman, what is the drill?

Clerk of the Committee: What you are doing right now is proceeding with clause-by-clause starting with subsection 1(1). You have the book that

was provided to you with the government amendments. Those are the only amendments we have, so we have to work on the assumption that those are the only amendments that are going to be proposed.

So the question is asked if there are any comments on subsection 1(1), because the first amendment indicated is subsection 1(2). Mr Mackenzie has asked for an explanation of subsection 1(1). When there is no more debate on subsection 1(1) and it has been exhausted, the question will be put, "Shall subsection 1(1) carry?"

Then you move on to subsection 1(2) where the amendment is. At that time, someone will propose this amendment and move it. Then you will discuss that. When you have exhausted the discussion on that amendment, you will move on to the next section of the bill and so on, and so it goes right through. If there are no other amendments to section 1, and when the amendment to subsection 1(2) has been concluded, then you can put the question on the rest of section 1 unless someone indicates that he wants further discussion on the other sections.

The Acting Chairman: Those arrows would be the key--

1620

Clerk of the Committee: In the reprint? Well, It might be better to use the actual amendments, in conjunction with the reprinted version of the bill.

The Acting Chairman: But the arrows indicate to you that there is a government amendment.

Clerk of the Committee: That it is new from what the original printed copy was.

It has been raised that perhaps there is some question as to whether you are using the reprinted version as an absolute. That is nothing more than a working document. Do not confuse it with the original bill. The original bill as printed is the document you are working with; that is what you are amending. The one that is reprinted only indicates the proposed amendments. They have not been carried; they are not official; they are not final until you have voted on them; it is just a working document. Okay?

The Acting Chairman: All right. Are there further comments about subsection 1(1)?

Miss Martel: Yes. We were waiting for a definition of what "health care" included.

Mrs Sullivan: "Health care" would relate to benefits regarding such plans as Ontario health insurance plan coverage, which of course will change, and other health care plans, which vary from company to company; the benefit programs that have either been negotiated or are the standard within that company. "Life insurance" and "pension benefits" are delineated in this section.

Other benefits which may have been either negotiated or offered to an employee are not included but can be included in the Workers' Compensation Board calculations of the remuneration of the employee when it is looking, later on in the bill, at what the worker's earnings are in terms of the calculation of the wage-loss payments.



Mr Mackenzie: What about dental benefits?

Mrs Sullivan: Dental benefits would be included.

Miss Martel: If I can clarify that, in some places now when a worker is on total disability, some of those benefits are actually taken into account when the wage rate is taken into account to determine his two-week total temporary rate. Are all these benefits going to be included in that section as well? Would that be considered when looking at an injured worker's rate of pay?

Mr Clarke: Yes. What the bill does is two things. There is a reason for one of the amendments that has been proposed from the government, which we will get to.

The way the act currently reads, in determining a worker's wages and salaries for the purposes of calculating the compensation that is payable to him, the act says that the employer, in forwarding that information to the board, is to include all of the calculable benefits. In Bill 162, when we then provided for the employer to directly maintain the benefits and continue the employer's share of the contributions for those specific benefits mentioned, health care benefits, life insurance and pension benefits, we then as well amended the current act in the bill, to delete that cost from that calculation of wages and salaries, so that the employer would not be paying twice.

In answer to Miss Martel's question, in calculating wages and salaries, you would not include the employer's share of the maintenance of those benefits for that worker.

Miss Martel: Will it be used, though, to determine his future loss of earnings? Is that another payment that will be included in that section?

Mr Clarke: In the amendments that were tabled by the minister with the committee, you will see an amendment to do that. We made a mistake in drafting the bill in that the noninclusion of the employer costs of those benefits should have been only for the same period of time, the one year, that the employer was being obliged to maintain the benefits.

There is an amendment in the amendments tabled by the minister that will make it clear that at the end of the one year, when the employer is no longer obliged to maintain those benefits, his or her costs for that worker will then be included in the wage and salary calculation for the worker and thus will form part of the basis for determining the worker's loss of earning capacity. So they will be included at that point.

Mr Mackenzie: If a union contract, as some of them are now trying to do, negotiates additional payments for bridging benefits for those who may take early retirement, would that be included? This is a new field, but some of them are now discussing—

Mr Clarke: Mr Mackenzie, can you give me an example for a minute of one you are familiar with.

Mr Mackenzie: One of the suggestions that has been made at a number of council meetings of the unions is whether or not they should be negotiating a small premium or payment to cover workers taking early retirement so that their pension benefits for that period can be increased as an encouragement for early retirement.

Mr Clarke: At the time the accident occurs, and this is the time we

are working from—that is the point in time the worker is still at work—I do not think any bridging benefit can have any effect one way or the other. In other words, at the time of the accident, you are going to look at what that worker was entitled to at that point.

Mr Mackenzie: If he was a year away but such a contract was negotiated and was making such a payment, that would not be included then.

Mr Clarke: No, but if he is at work—

Mr Mackenzie: But if he would normally be retired within a period of time—

Mr Clarke: Yes, but you do not look to what he would have been earning in a year's time since you are looking at the actual wage or salary the worker is earning at the time the accident occurs, so he would be covered whichever way.

Mr Mackenzie: So if they were making a cent or two cent an hour payment, that would be part of the figure.

Mr Clarke: Yes.

Mr Mackenzie: When we are talking about "paid in whole or in part by an employer on behalf of the worker or the worker's spouse," in the case of the worker's spouse are we talking about strictly heterosexual relationships?

Mr Clarke: I would have to look at the definition of "spouse" in the act. Committee members will appreciate that what this bill does is to amend the act as it exists now:

"'Spouse' means either of a man and woman who, at the time of death of the one who was the worker, were cohabiting and,

(i) were married to each other, or

(ii) not being married, had cohabited with each other immediately preceding the death,

(A) for a period of not less than five years, or

(B) in a relationship of some permanence, where there is a child born of whom they are the natural parents."

That is, by the way, clause 1(1)(xa) of the act on page 4 of the act.

Mrs Sullivan: Page 8 of the red book.

Mr Clarke: The red book? Sorry. I am working from an old blue one; page 8 of the red. I would think that refers to heterosexual relationships.

Mr Mackenzie: Dependants: I take it then from what you have read previously that would include children we would generally class as illegitimate children who are—

Mr Clarke: Yes. The intent simply was that where the employer is contributing to both kinds of benefits—in the case of health benefits, the dental plan for example, it is for the worker, it is usually for the spouse

and usually for the children as well. It is that kind of benefit that would be covered by this.

1630

Mrs Sullivan: As defined in the current act, "'dependants' means such of the members of the family of a worker as were wholly or partly dependent upon his earnings at the time of his death or who but for the incapacity due to the accident would have been so dependent."

The Acting Chairman: Are there further comments on subsection 1(1)?

Miss Martel: Are you finished with "contributions"?

The Acting Chairman: Yes.

Miss Martel: That leaves the question of the definition of "disability." I do not think there is a definition of "disability" anywhere under the current act and I just want to see if that is correct. No, there is no strict definition, so I take it what this section is doing is, for the first time, actually defining that term for the purposes of the act.

My concern in reading the definition that appears here, which is that disability means "the loss of earning capacity of the worker that results from an injury," is with the emphasis on disability as being solely related to his loss of earnings or what he can or cannot earn after he suffers this accident. It seems to me that we are putting in place an extremely limited or very narrow definition of the term "disability," one that is related solely to his earning power before and after the accident.

I would like some clarification or explanation from the parliamentary assistant or the minister's people who are here as to why we are looking at disability in such a narrow interpretation of that particular term. I can just give two examples. I checked the dictionary definitions of both, and the Oxford dictionary definition was that a disability was "a thing or lack that prevents one's doing something; a legal disqualification; physical incapacity caused by injury or disease." This is very broad.

The Webster's dictionary definition was also very broad, it being "the condition of being disabled; inability to pursue an occupation because of physical or mental impairment; lack of legal qualification to do something," and finally, a nonlegal "disqualification, restriction or disadvantage."

I suggest that the definition that appears in this bill is far more limited than the ones that appear in the dictionary. Perhaps I can get some explanation as to why we are moving in that direction.

Mrs Sullivan: If I could speak to that initially, the only time the word "disability" is used in the current act is in subsection 45(12), where permanent disability is defined as a functional or physical loss. It was felt in the drafting that with the introduction of a dual award system, it was important to have a consistent and clear definition of disability that related to the loss of earnings capacity that would be used in the economic award judgements, and the word "impairment" would be defined to relate to the physical or functional abnormality that results from the injury. The word "disability" is going to relate to the earnings loss award as the measure of judgement relating to that award.

There is no definition now because that economic loss, as we know it

under this bill in combination with the new award, does not exist. To make it clear that there would be a separation of the definitions, a new definition of disability was added that will always mean the economic loss section.

Miss Martel: Further on that, my concern is that even in the reading of that specific definition, it does not say that term will only ever be used for the earnings loss section or the new section 45. My concern is that if we put into the act a very narrow definition of that particular term right now, that then becomes the definition if the word "disability" is ever incorporated in any other place back into the bill. It is not restricted in any way solely to the new subsection 45(5), to the dual award or to the future loss-of-earnings section itself.

What do we do if there are amendments down the road or changes down the road if we are looking at the question of disability and that very limited definition is used elsewhere outside of section 45 and the dual award system? Then it really narrows what the situation of the worker is, and in fact he is not disabled in any way unless he suffers the loss of earnings, cannot return to his job or can only return and does not return at the same rate of pay as before.

I am really concerned at putting that kind of definition into the act and having that definition used later on to limit what a worker can expect to receive from the board if he suffers a disability from work that is not a permanent disability, but a disability.

Mrs Sullivan: I think, though, that with a definition of "disability" being added, the disability is not to be described as a physical disability; it is the disability to be able to earn. I think we are talking semantics to a certain extent.

Mr Mackenzie: I do not think you can separate them.

Mrs Sullivan: I think there is no question that the economic comparison in terms of using the word "disability" is the disability in the ability, persons being disabled from earning X number of dollars in salary because they are going to be doing something else. The word "disability" comes through the act in many places as does the word "impairment." Separating the two terms became very important when we were going into our dual award system. The use of the word "impairment" relates to what you would commonly think of now, and under the act now, as the physical disability. It is a change in words. It is a redefinition to provide greater clarity and a separation of the two terms.

Miss Martel: How many other times is "disability" used solely by itself, not in terms of permanent disability but on its own? The parliamentary assistant has said one, and then has said several other times. I would like to know if it affects only section 45 or if that word follows elsewhere in the legislation. What we may be doing is tagging that definition to other sections outside of section 45.

Mrs Sullivan: There are several places. It would take a while to count them.

Mr Dietsch: I am curious to know if the hangup is on the word "disability" and how many other times it appears in the act and having some concern for something that may happen. Perhaps the member can tell us where it is in the act and where her fear lies with it as opposed to running through the act and counting all the areas disability relates to. I do not understand the relationship.



1640

I understand the member's concern in what she is saying, but I think the parliamentary assistant pointed out that it is a split in terms between "disability" and "impairment," and from the points of view I hear being made, I think the term "impairment" covers it, unless there is some other area that the member has specifically pointed to that relates to her concern. Maybe she can express that to us.

Miss Martel: I will try to do so again. If you look at the definition of "disability" that is presented in the new act, it says: "'Disability', in relation to an injured worker, means the loss of earning capacity of the worker that results from an injury." That is an extremely narrow definition of the word "disability." I used the two examples from the two dictionaries to point out that their interpretation of what "disability" entails is in fact far broader, including not just a loss of earning capacity, but a physical or mental impairment caused by injury, disease, etc.

Now, my concern is that the parliamentary assistant has said the use of "disability" in the context of loss of earnings will only be used in section 45, the new dual award system, to determine the future loss of earnings capacity of the worker. That is one section where the word "disability" is used, and it has a very narrow definition that she has tried to point out and the reason why.

My concern is that if "disability" appears not only in that section of the bill, but in many other sections of the present act, any other section that uses that term "disability" will also then have the very narrow, limited definition that appears in this section, which is related solely to a loss of earnings capacity and not to the physical, mental or whatever impairment the worker has.

What we are saying in effect in other sections of the bill is that the worker will not have a disability unless he suffers a loss of earnings. My concern is that if it appears in numerous other places in the bill, or only several other, if we then accept this narrow definition of "disability," what are the consequences in other sections of the bill outside subsection 45(5) and outside the future loss of earnings section?

Is it right that we apply---this section, as I really hear it, does not say this definition is strictly limited for the purposes of section 45 and the dual award system. In fact, it gives a definition that disability will change wherever else it appears in the act.

Without knowing where the other sections are in the act where this word appears and the context in which it appears, I am not going to accept a limited version like that, knowing that it appears in other sections of the bill and may very well limit an injured worker's capacity to have any benefits because of that narrow definition that appears in the bill in this particular section.

Mrs Sullivan: I think one of the things you will notice through both the bill and the amendments is that there are other places, for example, where the words have been changed, where the word "disability" is changed; for example, section 4, "disability" in the current act is changed to become "impairment" so that the new definitions are consistent.

If that is what your concern is---are you asking whether where the word

"disability" is used in the current act, it has been changed to encompass the new definitions that are separate and distinct between the economic incapacity, if you like, and the "impairment" as newly defined? Is that what you are asking, whether consistency has been ensured in the drafting of these amendments?

Miss Martel: I am not sure if "disability" is being replaced by "impairment" all through the rest of the act.

Mrs Sullivan: Yes.

Miss Martel: So the only single time when "disability" is going to be referred to when this act is finished with is in section 45.

Mrs Sullivan: No.

Mr Clarke: Let me try again. What we have done, and I believe we have done it correctly, is that if this bill is passed, throughout the act "disability" will mean essentially the economic loss; "impairment" will mean, as defined, physical or psychological impairment.

What you will see throughout Bill 162 is a whole host of amendments where we are using, as Miss Martel pointed out, a nondictionary definition of "disability." We have very clearly defined in the bill what we mean by the word "disability," but in the existing act "disability" is used in a number of places. Bill 162 contains throughout it a long list of amendments which replace the word "disability" in the current act with the word "impairment" to make it clear that what we are talking about is that broader functional impairment that Miss Martel was talking about and was concerned about. We have done it all the way throughout.

There will be occasions throughout the act where one needs to make reference to actual economic compensation and therefore we have used the word "disability."

Miss Martel: Then the only time that we would be seeing that carried throughout the act is strictly in subsection 45(5), where it refers to disability.

Mr Clarke: Or something that relates to that.

Miss Martel: I wondered about that, too, because my further concern from there is the incorporation in future of the terminology "disability" or "impairment." How do we keep the board in future from using the narrow definition of "disability" that we pick up here to apply it to other sections outside of subsection 45(5), so that the change is only being made by the ministry?

Mr Clarke: But the change is to the act, so the board has to operate according to what the act says.

Miss Martel: If, as you said, we are strictly limiting it to the dual award system, is there not a way we would outline that in the legislation; that for the purposes of the dual award system, that definition of "disability," which is very narrow, will be used only in that section?

Mrs Sullivan: I think it will not be used only in that section. It will only be used in sections of the act, however, that relate to the loss of

earning capacity of the worker. By example, I see section 42 of the act, under section 13 of the amendments, is changed so that "degree of disability" is used, rather than what is now written as "impairment of earning capacity," so that there is a consistency. Once again, that specifically relates to a loss of earning capacity. The words "degree of disability" are added for the purposes of the income loss calculations.

Miss Martel: In any of the sections that it is used, it is used in terms of the calculation itself, is it not? You have referred to subsection 42(2), which is referring to a specific amount that will be paid or a specific calculation. The term "disability" is used in reference to the manner in which the calculation will be worked out. I am wondering if it can be narrowed to refer strictly to the calculation of that benefit, if indeed that is what the government intends to do, that it be used only in that area where the earning capacity is being worked out.

Mr Clarke: I think that is what the bill does, in actual fact. It is kind of hard to quickly isolate all of the occasions where we have amended this, but in some places, and I would refer the member to subsection 75(2) of the current act—unfortunately, I am working from the unilingual version, rather than the bilingual version—page 88 of the bilingual version, where the clause already makes reference to disability in clause (d), "the existence of and degree of disability." That is where we mean to maintain it because that refers to the degree of compensation. We have added in the bill to include also impairment.

1650

There are some occasions like that where the word "disability" as used, even after redefining, is appropriate in the existing act, but all of the time you will see what we are talking about is the loss of earning capacity, the economic loss, if you like, is where it is used I believe all the way through.

I think it is simpler the way we have done it, just to simply define it like we define other words in that definition section, and we have something that we can consistently use throughout the act.

The Chairman: Any questions?

Miss Martel: No, Mr Chairman. I just leave the committee with my concern about using such a narrow definition. If we could have defined it in relation specifically to that section, I might not have worried that it could be used later on to refer then to other sections and have a very narrow interpretation, but I will leave it as it is.

The Chairman: Okay. Does that conclude debate on subsection 1(1)? We are voting on subsection 1(1) and there is clause (ea) and clause (g) within subsection 1(1). When we dispose of that, we will move on to subsection 1(2).

All those in favour of subsection 1(1)?

Miss Martel: Whoa, Mr. Chairman. I am going to ask for 20 minutes.

The Chairman: Oh, okay. We will vote at 12 minutes after five. Agreed. Five twelve? All right. We will recess until 12 minutes after five.

The committee recessed at 1652.

1713

The Chairman: The recess has been completed and we are here to vote on subsection 1(1).

Mr Mackenzie: Recorded vote.

The Chairman: A recorded vote has been called for.

The committee divided on subsection 1(1), which was agreed to on the following vote:

Ayes

Dietsch, Lipsett, Sola, Stoner, Tatham.

Nays

Mackenzie, Martel.

Ayes 5; nays 2.

The Chairman: Mr Dietsch moves that subsection 1(2) of the bill be struck out and that the following be substituted therefor:

"(2) Clause 1(1)(i) of the said act is amended by adding at the end thereof 'but does not include contributions made under section 5a for employment benefits.'"

Miss Martel: I have a concern in reading that section, as I relate it back to the original act and a particular section. If members take a look at the present act, they will see that that section says, "'earnings' and 'wages' include any remuneration capable of being estimated in terms of money." What this particular amendment does is propose that wages and earnings not include contributions for employment benefits. That is, if I am reading this correctly.

Mrs Sullivan: Under section 5a.

Miss Martel: I am looking at the original bill and it does not say, "under section 5a."

The Chairman: Miss Martel, under the original Bill 162 it does not make any reference to "under section 5a." Right?

Miss Martel: Right.

The Chairman: Under the amendment as moved by Mr Dietsch, the words—I hope I have the exact words here—"made under section 5a" are added to what was originally in Bill 162. Do you have this package of amendments, Miss Martel?

Miss Martel: Okay. Sorry.

The Chairman: That is what has been added to the original amendment.

Mrs Sullivan: Mr Chairman, I would like to speak to this clause for a moment.



In the earlier discussion relating to contributions for employment benefits, Mr. Clarke discussed some of the rationale for this change. As you know, the bill would now require that employers would continue employment benefits for injured workers for up to a year following their injury. Mr. Clarke has indicated that there was a drafting oversight in the bill as presented, which would have meant that the employers would not only be continuing the contributions, but would also see the benefit payments included as part of the calculation of the earnings and wages for the employees. In other words, the employer for that one-year period would be paying twice. This amendment is to ensure that the employer pays once for the benefits that he is required to continue for the year period under Bill 162.

Additionally, subsequent to that year period, the benefits or the value of the benefits payments would then be calculated as part of the earnings loss calculation for the injured worker.

Miss Martel: My concern is that when an employer is asked to submit earnings on behalf of his employee for the purposes of providing compensation, under the current act any benefit package that the worker receives under his collective agreement is not included in either his wages or earnings. It does not appear as information that would be used in the calculation to determine his biweekly benefits.

1720

Unions, as far as I am aware, have long argued that employer contributions, as we have already talked about, being pensions, OHIP premiums, health care, etc, should be included in terms of being earnings or wages of the said employee, for the reason that in many unionized shops that benefit package then becomes a part of his overall payment. However, when they go on compensation that benefit package is not considered part of their wages and salaries so in effect they actually receive a lower compensation rate than they should be entitled to.

On the one hand we have not being included, under the purposes of the present act, a benefit package which would in many cases increase the amount of compensation a worker would receive. What the government is now suggesting is that while we will not include employer benefits to increase a worker's compensation rate if he is off on total temporary disability, we will take it into consideration when we deal with his future loss of earnings.

My concern is why we would, on the one hand, not include it as part of the benefits he should be entitled to, but we would then be quick to take it into consideration in determining what his future loss of earnings would be. We would not normally take it into consideration when we were determining what he should be entitled to while he is off on a temporary basis. Why then would it become part of a package later on when we are setting his future loss of earnings?

Mr. Clarke: If I might, I think Miss Martel is quite correct in saying—From the understanding we have acquired from the Workers' Compensation Board, this section of the act has probably been honoured more in the breach than in the practice in the sense that employers have not, in many instances, properly forwarded to the board, in terms of reporting the earnings and wages of workers, the remuneration capable of being estimated in terms of the money.

Apart from the error we had in the drafting, we believe that by placing this provision in there it will mean that a year after the accident, when the

board is required to make that determination it is going to have to be somewhat more active in terms of making sure it has gotten from the employer the full meaning of clause 1(1)(i). In the costing estimates we have done on the dual award system and the entire costing of Bill 162, I believe—it has been a while since the board was before the committee—it was in the estimates it showed the committee. We estimate that this greater recognition of what should probably have been recognized all along and much more frequently will add about \$25 million annually to employer costs for workers' compensation in a direct sense. It is not part of the system, but we think it will place more emphasis on this entire section and result in that remuneration being reported more frequently.

Miss Martel: My question coming from that is: Where in the rest of the bill is the onus to be placed upon the board to ensure that if the worker is still off after a year, the benefits he would have been entitled to were he not within the year period are now going to be included in the amount of money he is receiving, if he is still off on total temporary disability?

Mr Clarke: There is not anything in the bill statutorily beyond what the impact is on the definition under clause 1(1)(i). That would be a matter for the board, in terms of the way it ensures this gets reported, either getting it reported at first instance, in which the employer says: "These are the earnings and wages. Should the worker elect to pay his share, if there is a share on the worker's part to pay, here is the amount of money that should not be included during this first year." Alternatively, the board may very well have to go back one year later and again request the employer to provide that kind of information. That is really a procedural operation for the board to make sure it has gotten the correct information from the employer. Clause (i) says what is to be done and it is up to the board to figure out how it is going to do it.

Miss Martel: Would it not make more sense that the whole clause be changed to ensure that the onus is on the board; that in fact we say that earnings and wages would include contributions made by the employer unless we are dealing with the first year when the worker is off, when under another section of the act the employer would be picking that up?

Mr Clarke: I think the net effect is the same. I think the bill, if amended by this amendment, results in the same thing at the end of the day.

Miss Martel: I do not, because in the first case, when a worker would be going off the job, I do not think the board would be asking the employer to give consideration to both; that is, (a) the earnings and (b) also put on form 7 what he would have made if the benefit package had been included. In fact, the board would be assuming the employer would be continuing to pay the benefit package, but it probably would not appear on the gentleman's or woman's statement of earnings.

So a year later, we have to hope the board is going to pick it up or the worker is going to know enough about the act that he can go to the board and say: "All right, the obligation of my employer has now ended because I have been off a year. I would like you now to contact my employer and get from him what the benefit package for me would have been so that it can now be included on my form 7 and be incorporated into my payments."

I do not think it works out the same in the end, because I think you are going to find out that most workers are not going to know enough about that type of thing to make a call to the board, and given the present state of

files at the board, I hardly think that most adjudicators are going to pick that up, unfortunately.

I would be far happier to have the onus on the board right from the beginning to have all of that provided and the board make the step of ensuring that the employer is not paying double in the first year, rather than have the onus put on the worker to somehow make the adjudicator aware, after a year's time, that his whole wage package should now be included in the overall benefits he is going to receive from the board.

Mr Clarke: The only comment I would make is that I think it is important to remember that this exclusion of the contributions only applies to those employment benefits the employer is obliged to maintain by this bill. In other words, there will be other employment benefits the employer is not obliged to maintain. I think that will cause the employers to be a lot more accurate in what they are reporting and which ones they are reporting to show what they do not want included. In other words, there could be a much larger employee benefit package.

If I can use an example, some places of work now have legal assistance programs, not unlike dental plans. This bill does not extend those particular benefits, but they are going to have to make the distinction between the cost for those benefits which are to be reported in the earnings and wages when they first report to the board, and that those are the ones that are not to be included. I think it will make the reporting much more accurate than it has been in the past.

I would agree that the onus is on the board. If the board is unable to do this correctly, I would agree that the worker is perhaps less likely to catch it.

Mr Dietsch: The other point that has to be made, too, is that if you put it in that context, there are many employees who are going to have, through their collective agreements, benefits paid for the full period of time they are off, by virtue of their collective agreement. You would have the employers filing individual forms for those benefit costs unnecessarily.

Miss Martel: I have to disagree, because the employer is under an obligation now, when a worker is injured, to submit to the board information about the employee which concerns his wages and salaries. All that information appears on the initial report of accident that the employer submits to the board on the worker's behalf. From there, the board makes the calculation of the benefits the worker is entitled to.

1730

It would seem to me to be fairly simple, on that same form, for the board to include only the benefits it is asking the employer to cover under this particular section, ie, health care, life insurance and pension. Those could be placed right on the employer's report of accident, as well, so that the board, from the moment the worker is injured, has an idea of what his hourly or weekly rate is but also knows what kind of contribution the employer is going to be making in that regard.

It would be a fairly simple exercise for the board, after the year is up and if the worker is still off, to return to that original statement and find out then what is owing to the worker, now that the employer is no longer paying for those three benefits.

Mrs Sullivan: Mr Chairman, I think Miss Martel has moved into an administrative area relating to this and to what has apparently been a fault in reporting and in handling in the past. I like her suggestion of changing the forms and I think we can suggest that to the board.

Mr Mackenzie: More proper would be an amendment to change it here while you are doing it.

The Chairman: We have an amendment before us. Is there any further debate on the amendment moved by Mr Dietsch?

Miss Martel: The question was raised by myself first, Mr Chairman. Can we not include that in the amendment to put the onus back on the board, where I think it should be and is not the way this is presently drafted?

If we are going to include that the onus is on the board to provide the information or to have the information provided to it by the accident employer in the first place, we should outline that to it.

The Chairman: Because once this has been dealt with, it is dealt with and it is passed as is. If you wish to move an amendment to this amendment, assuming it was appropriately worded, that would be in order. Do you follow me?

Miss Martel: So we do not move it at the same time?

The Chairman: The way the amendment is now worded, as put by Mr Dietsch, you could move an amendment to what Mr Dietsch has moved. That would be in order.

At that point we would entertain debate on your amendment to the amendment, and then we would vote on the amendment to the amendment before we got to Mr Dietsch's amendment. That would be in order, if you were prepared to make such an amendment to Mr Dietsch's amendment.

Ms Martel: So you want to amend after we vote on this?

The Chairman: You could not do it afterwards, because that would have disposed of this section of the bill. We would have dealt with it and it would have either been passed or defeated.

You would be totally in order to move an amendment to Mr Dietsch's, or you can vote against the amendment as moved by Mr Dietsch. The choice is yours.

Miss Martel: So I would have to vote in favour and hope they would accept my second amendment. Is that what you are saying?

The Chairman: No, you would have to move the amendment now that changed the wording, the way Mr Dietsch has moved his amendment. You would have to say, "I move that Mr Dietsch's amendment be changed by adding such and such words," or "removing such and such words." At that point, if it was in order, we would vote on your amendment to Mr Dietsch's amendment.

Miss Martel: Okay.

The Chairman: Because once it is voted on, that is it.

While you are thinking about that, members have different ways of coping



with complex legislation, because the original act is complex in itself. The amendments, Bill 162, are complex, and now we have amendments to these amendments which are themselves complex.

So there is going to have to be tolerance among members of the committee as we struggle through this. I hate the reprinted bills, although I am not opposed to their being laid before the committee. That is fine. But I think they confuse the process. For myself, I work with the amendment moved by whoever, in this case most of them by the minister, and Bill 162 as it was laid before us. When I get into the reprinted bill, it confuses me more than it helps. All this does is show you what the bill would look like at the end, if all the minister's amendments were accepted. That is really all it is meant to do.

So different members have different ways of doing that, I know. But amendments that did not deal with Bill 162 and that change this would be out of order, so that is why we have to be careful as we wend our way through this.

Mr Dietsch: In relation to those comments, I think probably what the design was meant to do was reflect exactly where the amendments were going to be placed within the context of the bill.

The Chairman: Right.

Mr Dietsch: It might make it one more piece of paper to work with, but around this place one more piece of paper has not seemed to cause any great difficulties in the past, so I think it is a case of how one gets used to working with those things.

The Chairman: I agree. There is nothing wrong with it for us.

Mr Dietsch: The unfortunate part is that Mr Mackenzie left the room and could have helped his colleague put the amendment together. That is too bad.

The Chairman: All right. We have had a discussion on the amendments in general. Is it the wish of the member for Sudbury East (Miss Martel) to move an amendment now or to vote on this section?

Miss Martel: Legislative counsel says the better place to deal with it is under section 5a, where the whole list of unemployment benefits are actually situated, so I will not move anything here..

The Chairman: Okay, fine. Are there any other comments on Mr Dietsch's amendment to subsection 1(2)? If not, is the committee ready for the question? There is a head shaking over there; that is inaudible.

Miss Martel: My wish, Mr Chairman, is to have 20 minutes so I can go in search of my colleague.

The Chairman: Miss Martel has asked for 20 minutes. We understand there is going to be a vote in the Legislature on Bill 124 this afternoon. If the bells ring before five minutes to six, then may I assume we would start with this vote as the first order of business on Wednesday? There is no sense in coming back. All right. Failing that, we will be back here at three minutes to six and hold the vote if the bells are not ringing. If the bells are ringing, that is it.

The committee adjourned at 1738.

CARON  
XC13  
-578

R-9

STANDING COMMITTEE ON RESOURCES DEVELOPMENT  
WORKERS' COMPENSATION AMENDMENT ACT, 1989  
WEDNESDAY 21 JUNE 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitution:

Kormos, Peter (Welland-Thorold NDP) for Mr Wildman

Also taking part:

Sullivan, Barbara (Halton Centre L)

Clerk: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

Witness:

From the Ministry of Labour:

Clarke, Richard, Manager, Policy Branch, Labour Policy and Programs

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 21 June 1989

The committee met at 1536 in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

The Chairman: The resources development committee will come to order as we continue our in-depth perusal of Bill 162. Members have had a 24-hour and 20-minute recess to consider the motion put by Mr Dietsch and the committee should now be ready for the question.

Mr Kormos: Sorry, I was not here. I am wondering what the nature of the motion is.

The Chairman: We could read the motion, I think, as an act of co-operation, could we not? Do members agree to that? Do we have a copy of it?

Mr Kormos: No, it's okay.

The Chairman: It is the first amendment in the package of amendments by the government. Since it has already been called and the vote and the question have been called, we really must proceed with it. All those in favour of Mr Dietsch's motion, please so indicate.

Miss Martel: Could we have a recorded vote, please?

The Chairman: Yes, certainly.

The committee divided on Mr Dietsch's motion, which was agreed to on the following vote:

Ayes

Brown, Dietsch, Lipsett, Stoner, Tatham.

Nays

Kormos, Martel, Wiseman.

Ayes 5; nays 3.

The Chairman: Shall subsection 1(2), as amended, carry? Carried.

We now move to subsection 1(3) of Bill 162.

Miss Martel: Before you do that, I have a point of order that I would like to raise. Can I do that now between amendments?

The Chairman: Yes, go ahead.

Miss Martel: Actually, there is a motion that I want to move before



we go any further. If I can read that into the record now, we can take a look at it as a committee.

The Chairman: Miss Martel moves that this committee request that the Minister of Labour table all of the cost analysis prepared in relation to Bill 162, which was used to determine that the bill would be cost-neutral.

Do you wish to speak to your motion? The floor is yours.

Miss Martel: Yes, I do. In speaking to the motion—

Mr Dietsch: On a point of order, Mr Chairman: In the debate on the motion that has been put forward, I would like to ask whether that kind of a motion is in order, as we have entered into clause-by-clause at this point.

The Chairman: I would think it is because it is a procedural motion that is dealing with more information for the committee. So I would rule that the motion is in order.

Mr Dietsch: Okay, thank you.

Miss Martel: The reason for the movement of the motion really goes back to the course of the public hearings. Members who were at the public hearings will recall that there were a number of employers who came before us. When they outlined their concerns, many of them stated during the course of their deliberations that they were concerned that, contrary to what the minister had said regarding the bill, it would impact upon them and result in an increase in their assessment over the next number of years.

It seems to me also, in going back and looking a little bit at the history of this whole discussion, that this is not the first time that the minister has been asked to table information relating to the bill and relating specifically to his statement that the bill would be cost-neutral or revenue-neutral.

1540

The first time this was raised was during the debate on second reading when the Conservatives, at that time Alan Pope, asked the minister to table with the House any of the information, the data or the analysis, that the minister had used or the ministry had used in coming to the conclusion that the bill was revenue-neutral. Members will recall that that information has never in fact been provided either to the House or to this committee.

When coming before us during the course of the public hearings, the board's representatives did go through a bit of an analysis on the overhead, pointing out what they thought would be the shift in benefits from workers who, in their opinion, had more or were overcompensated now to people on permanent disabilities who were undercompensated at this point in time.

There was an avid discussion at that point as to what the data meant, but as far as I can understand, it has always been from the perspective of the board. We have never yet received, as a group, any information at all from the minister or the ministry concerning this particular issue.

I point out that during the course of the hearings not only did the employers make note of the fact that they were legitimately, I think, concerned with the minister's statement and whether it was true, but the

minister himself has said on several occasions during the course of this debate that in fact it is cost-neutral.

He said that to us during the course of the public hearings on 13 February: "I have said on many occasions that the reforms of Bill 162 will be cost-neutral. By this I mean that if we introduce these changes today for future claims, there is no reason they would lead to either overall cost increases or decreases."

He said again, this time speaking to employers at the Corpus conference in February, "We are firmly convinced that we can provide fair compensation for injured workers in this province without increasing assessments to employers."

The concern that I have is that although the minister has said it will remain neutral because there will be a shift of resources within the system, in fact, if the board is going to provide more effective and adequate rehabilitation, there would have to be a major infusion of funds into the system in order for the board to provide that.

I am also not sure myself, based upon some of the material that I read into the record last week, remarks by Paul Weiler that in fact the system will require a great many more people in administration alone, even to deal with the effects of the dual award system and the reviews that are in the legislation that must occur in two and five years and any other time the board considers appropriate.

It seems to me that in light of what Paul Weiler has said about the dual award system, it will increase at least administration costs, and in light of what the minister has said about the board's new and enlightened commitment to rehabilitation, which I assume would mean more funds into the system, I, for one, cannot see how the system is going to remain cost-neutral or revenue-neutral.

I think it is incumbent upon this committee that we actually get some of the hard facts before us, any of the data or the statistical information that the ministry had at its disposal when it drafted this bill which leads the minister now to say that the new system is not going to cost any more for anyone.

I think that it would be a fairly easy motion for members on the government side to certainly accept. We would be working at a bit of a loss if we did not see exactly what the ministry had in mind and what the ministry was using when it came to the conclusion that it did on this bill.

The Chairman: Does anyone else wish to speak to the amendment?

Mr Kormos: Yes. It is obviously not an amendment; it is—

The Chairman: Sorry, a motion.

Mr Kormos: Indeed, Mr Dietsch's comment about the timeliness of it is very valid. How could it ever be more timely than when this committee is embarking on its clause-by-clause consideration?

Mr Dietsch: Could you speak a little bit louder for me?

Mr Kormos: I am sorry.

Mr Dietsch: I have a worker's compensation hearing impairment. I am serious.

Mr Kormos: I am not disputing that.

The Chairman: We are not going to debate the merits of the rehabilitation system today either.

Mr Dietsch: I have a hearing problem, so perhaps you would speak a little louder for me. Just pretend you are in the House.

Mr Kormos: My apologies. On other occasions, I thought Mr Dietsch was just ignoring me.

Mrs Sullivan: That may have been true.

Mr Kormos: We will have to figure out which is which. I am sorry.

Mr Tatham: Not Mike. He's a nice guy.

Mr Kormos: Indeed, he and I get along well. We are both from the Niagara Peninsula and we both feel strongly about the peninsula and the interests of the people, the workers and the injured workers who live there—

The Chairman: And the bill and Miss Martel's motion.

Mr Kormos: —not just in my riding, but in his riding. There are obviously mutual concerns, because some people who live in my riding work in his and some people who live in his riding undoubtedly work in mine. There is a lot of crossover, and it is important that there be some co-operation between Mr Dietsch and myself, and indeed there is.

The motion is particularly timely because it precedes a clause-by-clause consideration. I in no way purport to be as familiar with this legislation as Miss Martel is. I do not think there is anybody in the House who is as familiar with it as Miss Martel is. But I am well aware that one of the persistent claims is this claim about cost neutrality.

That is an interesting claim because already—and I am reflecting on the fact that \$140,000 worth of taxpayers' money was spent to promote the Liberal government's view of its amendments; that is to say, Bill 162, appreciating, of course, that it is legitimate for a government to promote programs, policies or legislation that is existent. It is really quite another matter for the Liberal government to promote its own view of proposals that clearly have been and still are very controversial.

When I speak of that, and it is relevant to the issue of cost neutrality, the Minister of Labour (Mr Sorbara), I am told, as of around February perhaps of this year, had spent \$140,000 on radio ads and pamphlets that were distributed that praised Bill 162. The publicity was in English, French, Italian, I think Portuguese, Greek, Spanish and I am sure Chinese.

That \$140,000 worth of taxpayers' money was spent before Bill 162 was even close to becoming law, certainly no closer than it is today. Bill 162 was merely a proposal by the Liberals to change the Workers' Compensation Act. It had gone through first and second readings.

Mrs Sullivan: On a point of order, Mr Chairman: In my view, the

member is not addressing the content of this motion. I wonder if you could make a ruling on that.

Mr Kormos: May I comment on that?

The Chairman: Well, no. Would you just address the motion.

Mr Kormos: Of course, we are talking about cost neutrality, and as I understand cost neutrality, it implies that it will cost no more, cost no less. What I am commenting on are the concerns I have in that regard because of the fact that already \$140,000 was spent on a little publicity campaign.

We are speaking about cost neutrality. That, apparently, is a claim of the government. The government refused to agree that all of the over 600 groups that wanted to appear before the committee should be heard. So first and second readings, where the bill was opposed thoroughly by the New Democrats and the Conservatives in the Legislature—as I say, it is hard for me, and perhaps it is hard because sometimes I look at dollars and cents as dollars and cents. I have difficulty understanding the cost neutrality of the legislation, because it looks like it has cost taxpayers of this province a great deal of money already, money that would not have otherwise been spent.

I suppose the primary thrust of this motion is to look at the cost neutrality of the legislation itself when it is put into place, God forbid that it should ever be. This is obviously one of the selling points.

1550

The Chairman: Anyone else? I am sorry, Mr Kormos.

Mr Kormos: I am sorry, I had to have a drink of water, Mr Chairman.

Because this bill has been flogged. When I saw the government member with his model—not waste compactor but backyard compost machine, I have to tell you that in Welland—

Mrs Sullivan: On a point of order, Mr Chairman: Could the member please speak to the motion.

Mr Kormos: Trust me, this is relevant.

The Chairman: The technicality of—

Mr Kormos: No, I was talking about an approach to things. I saw this model of this fancy, sophisticated machine, and it made me think about my eastern European grandmother with her compost heap. She did not need expensive machinery, she did not need fancy funnel-shaped machines that go in her backyard. She had a compost heap for years and years like so many other people do down in Welland and Thorold and even in the northern part of the peninsula because they know better than to waste their money on galvanized metal machinery. They knew about compost heaps a long, long time ago. Quite frankly—

Mr Dietsch: Even the stuff that goes in.

Mr Kormos: That is right. A reflection on their ability to really get to the issue is the fact that in Welland-Thorold they elected New Democrats for such a long time.

The Chairman: Mr Kormos, as soon as you stop being entertaining, you will be ruled out of order.



Mr Kormos: The matter of cost neutrality is something that concerns workers because they know that ultimately if costs are passed on to, let's say employers, through the system, those costs are similarly going to be trickled down in short order to the workers themselves. Employers have been pretty critical of the workers' compensation system. As a matter of fact, some employers have been critical of Bill 162. What is remarkable is that the government seemed to acquiesce to employers when they were critical of Bill 208 about which we have seen and heard so little.

Mrs Sullivan: On a point of order, Mr Chairman: The member has once again strayed from the content of the motion.

Mr Kormos: I will accept that criticism, Mr Chairman.

The Chairman: But will you accept my ruling?

Mr Kormos: There is no need for a ruling if I have accepted the criticism.

The Chairman: To be fair, you really must stick to the motion moved by Miss Martel, which has to do with soliciting information from the ministry on cost neutrality.

Mr Kormos: But that requires a discussion of this whole proposal, of this whole argument, of this whole proposition that the bill is going to be cost-neutral, because if one were able to accept as a reality that it was indeed going to be cost-neutral, then Miss Martel's motion would have no *raison d'être*. There would not be, because there would not then be any need to look at the background, to look at the facts and figures.

The other issue is that if there were no concerns on the part of the minister or the ministry and the government members about this bill indeed resulting in a cost-neutral situation, then there would be absolutely no difficulty with accepting this motion. All that is being asked is that the minister table all the cost analyses prepared in relation to Bill 162.

There could have been no cost analysis, in which case it is a simple matter of saying, "No, we have not done that," so notwithstanding the committee having passed that motion, it is a matter of: "Sorry, but you are not about to see any because there isn't any. Our allegation, our declaration that the bill was going to be cost-neutral was either a prevarication or it was a leap of faith on our part." Then we would have to live with that and move on from that point.

Being told that by the ministry might cause some members of the committee to say: "Whoa. If that's the case, then maybe this whole matter had better be delayed for the purpose of preparing some of that analysis," because we are not about to live with prevarication and not all of us are prepared to make the same sort of leaps of faith that the minister and government members are going to.

The alternative to that would be, of course, that there has been cost analysis, and the documentation that is presented could either support the minister's position, in which case it is hard to argue against the facts and figures; there they are in black and white demonstrating that the bill is cost-neutral. Miss Martel might say: "Although I'm not prepared to withdraw my criticism of the bill, I'm not going to attack and criticize and belittle the minister for being inaccurate about it being cost-neutral. That much I'm prepared to concede to him," if indeed the facts and figures demonstrate that.

I guess the scariest thing would be the tabling of this type of material and the revelation that either the minister misunderstood the analysis that was done, or he had never read it in the first place, or that the claim on his part that the bill was cost-neutral was at best mere puffery, if not worse than mere puffery.

This motion would not delay the process at all, because it does not call for a suspension or termination of hearings until the material is provided. Obviously, there is enough work to be done in the course of clause-by-clause consideration. Surely the minister has this cost analysis, unless there is none, at hand and filed under "cost analysis." It would be a simple matter of plucking it out and putting it on the table.

Again, the people in the community, the taxpayers, deserve to know that what they are instructing—I appreciate that the injured workers and trade unionists from some of the Liberal members' ridings have obviously been telling them different things from what they have been telling people from Sudbury or Welland-Thorold. I presume the Liberal members are acting in response to the guidance and direction they get from their electorate, the injured workers, the trade unionists in their ridings. I presume the trade unionists in the Liberal members' ridings are telling them, "You support that bill, because you're our representative and that's the way democracy works. You act in our best interests." I presume that to be the case.

But they have a right to know, and what Miss Martel's motion does is create a little more openness and a little more candour than would have existed otherwise. It permits people to see the information upon which the minister relied, if indeed it exists, to make his comments about the bill being cost-neutral. It permits members of this committee to determine whether or not the minister has been misled by a lack of appreciation of the analysis and facts and figures that are presented to him. It really does not constitute any increase in the time spent by this committee, because this committee, as this motion stands, would just presumably carry on to the consideration of the next clause. There might have to be a couple of clauses that would be bypassed, ones which, in anticipation, would most directly impact on cost analysis and cost neutrality.

1600

Quite frankly, all the messages I have been getting from people who know about this type of legislation are that "cost-neutral" is a bizarre thing to say about it, that it is foolish to talk about this legislation as being cost-neutral, but I am prepared to give the minister the benefit of the doubt for the time being.

That is why this motion is so important, because it would let him demonstrate that indeed he has been straightforward, that indeed he has told it the way it is, that he is not like the fellow flogging the compost machine in a K-Tel ad on TV.

It is as simple as that: "Here are the facts and figures. I'm not afraid to let you see them." That is the sort of thing that would develop some respect in the community for this committee. That is why I am supporting this motion and why I am urging other members to support it as well.

Mr Wiseman: I support Miss Martel's motion. I was here the day the minister came in and said it would be cost-neutral. I do not have with me today the talks or speeches the minister has given outside of here saying it

would be cost-neutral, but I do remember my colleague Alan Pope asking for this information when he was here one day, and I got the impression it would be coming forward fairly soon.

I think the Liberal members on the committee, having sat on the other side, would want to know for sure what documentation is available to make sure it is cost-neutral. If the minister made those statements, we have to take him at his word that he has done a study, and it should not be very long coming forward. Maybe the promise he more or less gave Alan Pope has just slipped his mind. I do not think he would go out saying it was cost-neutral if in fact it was not, so I am sure we should get something back fairly soon.

I have talked to some employers, and some of their people who have looked into the legislation are worried about whether or not it is cost-neutral. Before we pass a bill like this—And it will pass at some point, because I know the members across from me have been whipped and lashed into passing it, even though they have heard, as we did when we went around, from all the different organizations that it is not a good bill and should be scrapped and started over. I have not seen them with their shirts off, but I imagine the whip has really whipped them.

I would think, being the fairminded people they are, that they would want to see this cost-neutral examination. As I said before, I think we can go ahead with other clauses and deal with them, but it should not be something left right until the end to get. We should, if at all possible, put a deadline on the time in which we can get it. It could affect our decisions on certain clauses in here, and if it were timed so that it came in near the end of our discussions, I do not think it would be as good as coming in earlier on.

It should not be any trouble to dig up the information, because, as I say, we have to take him as an honourable person, that he would not have said it unless he had that background information. All he has to do is make it available to us.

The Chairman: As it reads now, there is no time reference in the motion. Anyone else wish to speak to the motion?

Mrs Sullivan: I would like to make a few remarks on the proposed motion. You will recall that in February 1989, Mr Elgie and Mr Wilson of the Workers' Compensation Board appeared before us and indicated to us in a comprehensive way the cost estimates which have been made by the actuarial experts at the board, who have the qualifications and the experience working with the system to do so. At that time there was an indication that the cost of the existing system is \$840 million a year. The cost of the new system is projected to be about \$835 million a year. Therefore, to quote Dr Wilson: "It's roughly cost-neutral."

He also pointed out at that time that there is another \$1 billion of expenditures associated with the transitional payments to existing pensioners which would be an increase to the unfunded liability. That additional billion dollars in transition would be funded by \$50 million a year, over the stream of 20 to 30 years, in association with the plan for reducing the unfunded liability.

I would like to say that the ministry and the Employers' Council on Workers' Compensation agree that the actuaries who are on staff at the WCB are the most qualified people to make the kinds of assessments and cost estimates we have had before us. Those are the figures the ministry and the minister



have relied on. Those are the figures the employers' council has relied on in terms of hearing the analysis.

They have been made clear to the committee. The committee had an opportunity to request further information and to question both Dr Elgie and Dr Wilson during their appearance before us. Indeed, the information that is available has been presented to us. For those reasons, I suggest that this motion not be supported.

The Chairman: Does anyone else wish to speak to the motion as moved by Miss Martel?

Miss Martel: I would like to make a couple of comments before I wrap up. I thought it was a Ministry of Labour bill, not a WCB bill. I do not remember that at any time during the course of this debate we were ever told as a committee that the figures the minister was using were in fact board figures and not something he himself or the ministry itself may have put together. This is the first I hear of it.

I do know, and I am the first to admit, that the board came before us and gave us its analysis which, I might point out, would probably change now, given that in the new amendments to the amendments to the amendments introduced in here some weeks ago the minister made a change in the transition section. That change would have taken away deeming for all those people who right now have pensions. He indicated, I seem to recall, that some 4,000 more people would be entitled to a supplement after this bill was passed; those people who already have a pension.

It would seem to me that those figures, at least the figures in terms of the \$50 million to be used for the transition, would now be thrown completely out of whack, because the minister has said he expects some 4,000 more people to be entitled. I was assuming that those 4,000 more people were over and above the 20,000 he has already said in the background paper would receive some form of compensation after this bill is passed. Those are the people, I remind members, who already have a pension but probably have never returned to work and have been left with only their pension.

So I am going to have to question even the figures we were given at that particular time, because I should remind members that the proposals the minister introduced did propose a change to the number of people who would receive benefits. Whether that becomes the case, I do not know, but that certainly was his proposal. Surely that is going to skew the information Dr Wilson presented to us during the course of the public hearings.

Second, I think it would have been incumbent upon the minister, then, if the figures he was using to justify cost neutrality would not be provided by him as the Minister of Labour—although he did, and Mr Wiseman is quite correct, promise to Mr Pope that these would be laid on the table of the Legislature and that we would have that information before us—it would have been incumbent on him to advise members of this committee that the figures he was using were board figures

1610

That would have shown, maybe, a little integrity, to at least let us know what the hell figures were being used, because we have not known that and I certainly was not under the impression that the board was dictating to the ministry what would be cost-neutral and what would not be.



I do not think it is a great deal to ask. I would like to see the figures. I assume there are more figures than what the board provided to us, which it seems to me was one or two pages, during its course of time before us.

I also seem to recall that the board used up its last bit of time—In fact, we did not get very far in terms of questioning. There was a question raised by Mr Dietsch about whether the board could come back to us and answer further questions, because we did not finish with it the day it was there. That has already been voted down by Liberal members on this committee, so I do not think it is quite correct to suggest we could have done it all there. We did not get through half the questions people were prepared to ask when the board was before us.

I think there have been a number of employers who were not—And we saw that during the course of the hearings. The employers' council may be happy with the figures it got from the WCB. I certainly seem to recall many employers who came before us besides the employers' council who said they had never seen any type of analysis on this bill, either what the dual award system was going to cost them or what the new ceilings were going to cost them over the course of the next three or four years. Many groups said the ceilings should be phased in over a couple of years instead of the time limits outlined under the bill.

I should also point out to members again that even that particular section of the bill has changed now, so that any information employers may have been able to obtain concerning what impact this is going to have on their own industry has now changed, because the minister's amendments have changed in relation to the ceiling. That has just happened within the last four weeks.

I certainly do not see how any employers out there can know what the heck kind of costs they are going to be left with at the end of all this. Certainly many groups who came before us said the same thing, that they would like to take the minister at his word but they had never been given any information from anyone to show the figures that had been worked out or the data that had been worked out, and they would be much happier—having that in front of them before they would agree or disagree with the minister that the bill was cost-neutral.

I think it is a very simple motion I put forward. The work of the committee can continue. We do not need it for a while yet, because we will not get to the dual award section for quite some time. But I certainly think that any of the information concerning revenue neutrality should be provided to this committee, because I think what the board gave us was completely inadequate and I would hope the ministry itself would have had something more than what the board handed over to it to dictate to us.

Mr Wiseman: Just something Miss Martel mentioned. I think it is one thing to get the figures from the Workers' Compensation Board; it is another thing to get them from the minister. If in the future this bill goes through—as I mentioned before, the people across from me here are going to have to vote for this—the minister cannot come back and blame it on the board, saying the board gave him the wrong figures, if these are the minister's own figures and we have asked him to verify that they are accurate.

I have seen in the past that sometimes the board has been blamed for giving the wrong figures, and they are the bad guys. We have asked the minister in this motion by Miss Martel for the information, and I think that would be good for the future if the bill, when it is passed, is not cost-neutral. They are the minister's figures and not the board's.

Mrs Sullivan: I just want to refer back to the last point made by Miss Martel, relating to the costs associated with the amendments to Bill 162 which have been presented by the minister.

At the time those amendments were placed before us, an information package was also provided to the committee which indeed included questions and answers relating to the cost of implementing Bill 162 with the amendments. He indicated at that time that the amendments would not add significantly to the cost of Bill 162, which would still be carried out within a largely cost-neutral framework. Broadening the eligibility for the transition provisions, as proposed by the amendment, would have an impact of increasing the present value of the transitional arrangements by about four per cent.

What that means in the end is that about \$41 million would be added to the estimates of the transitional provisions over time. On an annualized basis, that would be within the \$5-million difference that has been stated in the Workers' Compensation Board original actuarial estimates. Once again, I would like to point out that the actuaries who work with the board are professionals. They are the most familiar with the workers' compensation system, and they carry with them the expertise of their profession and of their experience.

The Chairman: Any other comments? Is the committee ready for the question on Miss Martel's motion?

Miss Martel: I would like to ask for 20 minutes.

The Chairman: Okay. We shall vote at 4:36 p.m.

Mr Dietsch: The member would not consider shortening it to 4:30, would she?

Miss Martel: I do not think I could do that, Mr. Dietsch.

The Chairman: Okay. A recess until 4:36 p.m.

The committee recessed at 1616.

1637

The Chairman: We are back in session. When we adjourned, we were about to vote on Miss Martel's motion. Is the motion understood?

Miss Martel: Recorded vote.

The committee divided on Miss Martel's motion, which was negated on the following vote:

#### Ayes

Kormos, Martel, Wiseman.

#### Nays

Brown, Dietsch, Lipsett, McGuigan, Stoner, Tatham.

Ayes 3; nays 6.

The Chairman: Is the committee ready to move to subsection 1(3)? Any comments?

Mr Kormos: I notice subsection 3 contains basically three clauses. When the committee is discussing subsection 3, is it considering the three clauses in their entirety? I guess if there are any flaws, the way the bill is drafted is a flaw in itself, such that each clause does not constitute a separate amendment. That does not bar or preclude the committee from considering them separately, does it? What you are doing, Mr Chairman, by approaching it in that way is forcing the committee to take it lock, stock and barrel, when in fact somebody could be very satisfied with what would be clause (xb) of the amended act, yet dissatisfied with the other clauses. It is to that end that I am hoping the chairman might indicate that notwithstanding that they are all part of one subsection, we recognize that really as another major flaw and discuss them separately.

The Chairman: Okay. We are debating subsection 1(3), but you can debate any clause of that you want at any point, because it is all one subsection. But when the vote comes, we will be voting on the entire subsection 3. Okay?

Mr Kormos: Okay.

The Chairman: Please feel free to debate any one section at a time that you wish. Any comments on subsection 3?

Mr Kormos: I am wondering if I can get some help and an explanation of what will be clause (la), the definition of "impairment."

The Chairman: Right.

Mr Kormos: Now, a couple of questions, I guess. One is, there must be a reason why it says "'impairment', in relation to an injured worker." Are there other applications of the word "impairment" throughout the act that make it essential for this clause to say "in relation to an injured worker"? Surely that is there for a reason and I would like to have that question answered.

Second, I am concerned about the use of the word "abnormality." Perhaps it is appropriate that I be confused about that word. I am wondering whether there was a specific reason for using the words "abnormality or loss," saying one or the other. Perhaps I am a little off base because perhaps that is a word that is already used in the act, and if it is, so be it. If this is basically a new word, the concept of abnormality, again, I am hoping somebody can explain to me why that word was chosen.

First, why do the words "in relation to an injured worker" qualify impairment in that regard? Second, why does it speak of "physical or functional abnormality"? What is the purpose here? What is being encompassed by the use of the word "abnormality"?

That is why I have some problems. Of course, the word "abnormality" is not a word that stands by itself. It is obviously something that is in reference to something else, and what that invites is the test of determining normalcy. Before we go any further, I wonder if I can get some explanation as to those two things.

The Chairman: Is there an explanation from the parliamentary assistant or the—

Mrs Sullivan: Perhaps I can just explain the context of the addition of the definition, to begin with. As you know, with the dual award system we



are looking at two methods of compensation for injured workers. In order that the definitions be consistent throughout the bill, a new definition of "impairment" is being added that will ensure that the compensation for impairment is based on the physical or psychological harm done by a compensable injury.

We have already discussed a new definition of the word "disability," meaning the loss of earning capacity of the worker. In the current act, the word "impairment" is most commonly used to describe impaired earning capacity. As a consequence, the change in the definitions is for clarity and consistency throughout the act. They are, to a certain extent, housekeeping amendments so that people will understand that where they are used, "disability" always refers to the loss of earning capacity and "impairment" refers to the physical or psychological harm that has come to the worker.

The member has asked about the choice of the word "abnormality." I am not sure I can add much to an understanding of the choice of that word, other than to say that would have a meaning that would be considered not common or normal. Perhaps Mr Clarke would like to help out.

Mr Clarke: I do not know whether I can really add much to it. Clearly, "abnormality" means not normal. What we were trying to make sure is that in terms of speaking about the functional impairment, we were covering both where you have a complete functional loss and situations where you have something less than a complete loss, where some functioning is not quite what it was. It is a question of degree. We were trying to make sure we had fully covered that from the point of view of a partial to a full loss.

Mr Kormos: If the test is, let's say, the general population or the typical person, I am concerned about somebody who has an exceptional quality, either through accident of birth or through developing some exceptional physical quality, suffers a loss as a result of injury and loses some of his or her capacity, but notwithstanding the injury, because he had an exceptional capacity, then still falls within the normal range.

Mr Clarke: I understand.

Mr Kormos: I am concerned about literalists relying upon this to say, "No, you are well within the norm." We have norms, eyesight norms, hearing norms, but there are undoubtedly people whose ability and capacity exceed those norms. By virtue of that, they are abnormal. What I am saying is that what this appears to do is avoid any subjective determination of loss by speaking of abnormality and, again, generate some model of the typical or average person against whom people are going to be tested.

Lord knows, Ben Johnson is not the appropriate reference point, but obviously the Ben Johnsons of the world have physical capacities above and beyond that of normal persons. I suspect Ben Johnson—I guess it would not be "peers" any more—or others who have the same sort of physical talents he does could suffer some significant loss of ability yet still be within a range of normalcy vis-à-vis the general community or the whole province.

As I say, that is a very poor example and I wish I did not have to use it, but I am quite serious about this. I am very concerned about that phrase and the fact that it creates not a subjective test, but a test that could generate great unfairness to given persons.

Why it is important to raise it now is that we cannot count on people,



tribunals, decision-makers down the road necessarily to do anything other than apply a purely literal interpretation to this, and that is a literal interpretation. I wonder what you would say to that.

Mr Clarke: I think you have hit on and will understand now perhaps why we have included the phrase "in relation to an injured worker." We are trying to make it clear that the impairment one is looking at is with respect to that injured worker and not to some sort of generalized human being. We are trying to look at that specific worker, and that is why we have used the phrase "in relation to an injured worker," both in this clause and in clause 1(1)(g) above, which the committee has already adopted, to make it clear that this is an individual examination. You are looking at the impairment of that injured worker.

We tried very carefully to make it clear that this is what we are trying to do, and the impairment is in relationship to what that person was like before the injury. Thus, we use "any physical or functional abnormality or loss including disfigurement." We have tried to focus very clearly that what you are looking at is that individual and you are looking at his particular circumstance and not a general circumstance.

Mr Kormos: All right. I appreciate your explanation and I am pleased with the explanation, but I am not sure that is what the paragraph says. I will take it one step further. Look at what we have here. We have "physical or functional abnormality." Now, impairment means (1) physical abnormality, (2) functional abnormality, (3) loss.

1650

Mrs Sullivan: Physical loss.

Mr Kormos: My problem is that in we have, presumably, a conjunctive "or" between "physical" and "functional" and an exegetical "or" between "abnormality" and "loss." That creates the problem in interpretation.

I hear what you are saying. You are saying, no, physical abnormality, functional abnormality, physical loss or functional loss, but that is not what it says here. If it going to say that, then it has to undergo some drafting scrutiny.

Let's forget this phrase "in relation to an injured worker." First of all, I am still concerned about why that phrase is there, why there cannot just be a definition of impairment, but "'impairment'...means any physical or functional abnormality or loss." This is marked up. Are there commas after that? No.

This is really very disturbing. I think there are some real problems in the drafting of that paragraph. I have raised those issues, but as I say, the distinction between the conjunctive and exegetical "ors" is very, very important, because down the road, people are going to suffer at the way this particular clause is drafted. With what Mrs Sullivan is telling us, it surely does not reflect what she tells us it is intended to say. I wondering if there could be some comment on that, please.

Mrs Sullivan: The only thing I would add is that the word "loss" without the modifier "physical or functional" sits alone. As a consequence, when the legislative drafters tackled this—and not being a legislative drafter, I am not certain of all their reasoning. It seems to me that their

intent, and they felt that the drafting would stand up to scrutiny, was to have the words mean physical abnormality, functional abnormality, physical loss or functional loss.

Mr Kormos: If I have time to draft it, I think I might be of some help, Mr Chairman. Bear with me. I appreciate what Mrs Sullivan is saying.

The Chairman: Can we have other members raise matters on this while you are doing that?

Mr Kormos: Okay. I might be able to help in that regard.

Miss Martel: I just want to go back to the comment about the qualifying statement—just for my own purposes, put it in brackets—"in relation to an injured worker." I am just wondering if that is not becoming redundant. If I look at that in comparison to where else that clause, the new definition itself, is going to be incorporated, as for example in subsection 3(7)—okay, that is one of the changes that is coming up where "disability" will be replaced by "impairment."

The Chairman: What section?

Miss Martel: Subsection 3(7). "Disability," which appears in that line is going to be taken out and the new definition of impairment—

The Chairman: What page is that on?

Miss Martel: In the red book, it is on page 16. I do not know about the blue book.

The Chairman: Oh, you are talking about the act.

Mrs Sullivan: It is not in the book.

Miss Martel: The next change is over, the next page. If you go down to page 2 of the new bill, about halfway down, it indicates where "impairment" will replace "disability."

The Chairman: Okay.

Miss Martel: I just went back to the act itself, the present act to see where that change is made in the current bill. I am wondering if we are not just being redundant by having "in relation to an injured worker" included in that whole definition itself, because I am unclear in terms of this present bill who else "impairment" is going to refer to. I am still not sure why we have the qualifier in there.

Mrs Sullivan: If I could, I think what Mr Clarke indicated earlier, that the use of the words and the inclusion of the words, "in relation to an injured worker" refer specifically to the individual injured worker, and takes into account his or her personal attributes. As a consequence, it is necessary to include those words so we will not have the problems that were raised by Mr Kormos where a subjective assessment of loss is made, placing the individual against a standard of normality.

Miss Martel: We would be using abnormality in relation to an injured worker, would we not? He uses the example of Ben Johnson's attitude. The only time the definition is going to be applied is when we are dealing with an

injured worker, so we would be talking about Ben Johnson injured, not Ben Johnson with all his other natural attributes, which may be much different from the general population. We would be talking about the extent of his injury.

Mr Kormos: I understand more clearly now why Mrs Sullivan—I am sympathetic to her belief in the need to have "in relation to an injured worker." That is to say, to make it specific. I would ask why, in terms of how I interpreted this, does the phrase, "in relation to an injured worker" make the whole test a subjective one as compared to merely saying that impairment, when we are talking about injured workers, means this, as compared to impairment—impairment does mean other things in other places, in the context of other legislation. We know that. The phrase, "in relation to an injured worker" does not, in my view, generate a subjective test or permit that person to be regarded as the norm. I suspect and I do not know, is there a definition of injured worker? Is that in the initial parts of the Workers' Compensation Act?

Miss Martel: No, it is not.

Mr Kormos: In the definition section?

Miss Martel: No, I am in it. There is not.

Mrs Sullivan: There is a definition of "worker" under clause 1(1)(z).

Mr Kormos: Well, that is problematic because "worker" then as contained in the paragraph we are talking about has to be looked at in the context of the definition in clause 1(1)(z), and without any definition of the word "injured", or a precise definition of "injured worker", I suspect that creates complications because whenever a phrase is defined, the definition—in my understanding of how some of these things work sometimes—the overriding interpretation is as contained in the statutes. So the statute defines worker; it is one of those just lovely definitions that does not say "worker means" but "worker includes." So it is not one of those exhaustive definitions. Those are really horror shows.

Miss Martel: That includes all of those.

1700

Mr Kormos: It includes, but it is not restricted. Mr Chairman, look at that. You have got an exclusionary business at the end, "but does not include an outworker, an executive officer of a corporation, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's industry."

Maybe just for the record, for those people down the road—I am not sure, but I think that sometimes it is helpful to people to refer to the record of a committee that considers legislation—to help get its point across, could this committee get a concrete opinion from legal counsel as to whether or not the phrase "in relation to an injured worker" does what Mrs Sullivan says it does?

Does it make sure that the concept of abnormality is in reference to that person's prior capacity, performance level or status, both psychologically and physically, or does it simply say "impaired in relation to an injured worker" means this, but in relation to other people it means other things?

The Chairman: Okay. Perhaps we could ask Laura Hopkins, who could give us some assistance here.

Ms Hopkins: The use of "in relation to an injured worker" in this context generally is drafting shorthand rather than being intended to have any effect that would render this a subjective test. The reason we use "in relation to an injured worker" here is to avoid repeating a reference to the worker throughout the definition. We are not saying "impairment means any physical or functional abnormality of an injured worker or loss to an injured worker, including disfigurement of the injured worker, which results in..."

Mr Kormos: I agree that the lady is dead on, because that is exactly what I have been saying, and I appreciate that she is here with the smarts.

The Chairman: A lot of us have noticed over the years that the legal profession does stick together like glue.

Mr Kormos: Mr Kopyto was cleared, but you did not say Krazy-Glue did you?

The Chairman: Any further discussion?

Mr Kormos: Wait a minute, Mr Chairman. In view of what legal counsel has said, and contrasting that with what Mrs Sullivan says, we have problem. This committee has a problem because Mrs Sullivan says that phrase is designed to do a certain thing and legal counsel wisely says, "Sorry," as she put it, "drafting shorthand" so that it does not have to be repeated and make this a boring paragraph to read. Legal counsel is telling us that it does not have the effect that the people promoting it say it does. So, now we have a problem

The Chairman: Were you successful, Mr Kormos, in proposing an amendment?

Mr Kormos: I have one amendment prepared. We are going to have to deal with that phrase subsequent to this.

I have an amendment, but I suspect I should be very specific so that people are not forced into one of those omnibus type of deals where they may be opposing it because they oppose a portion of it rather than the whole thing

I move that clause 1(1)(1a) of the act as set out in subsection 1(3) of the bill be struck out and the following substituted therefore.

Well, we have to do this one stage at a time.

Ms Hopkins: May I make a suggestion to you? Can we turn off the microphone?

[Interruption]

Mr Tatham: Is this legal?

The Chairman: Can we put the mikes back on and have further debate on this clause?

Miss Martel: In terms of the question of disfigurement, in going back to the current act, I note that actually compensation for disfigurement currently is applied under a completely different section. It is subsection



45(10) of the current act, which allows that "where the worker is seriously and permanently disfigured about the face or head, the board may allow a lump sum in compensation therefor."

I would like to get some idea as to, first, why it is that disfigurement has been taken out of that particular section, which makes a specific reference to compensation for that problem and now will be part and parcel with the rest of the definition of impairment as it appears in the new bill.

Mr Clarke: If I may, when we rewrote the definition of impairment which appears in this bill, we were indeed trying to be broader than the sense of the old word, "disability," in the current act. When we looked at the question of disfigurement, it was argued that disfigurement should be fully considered as an impairment rather than as an add-on in the way it was treated in subsection 45(10), in which it was not considered to be an impairment but something for which the board had the discretion to award lump sum compensation.

We are moving to a different system and a new system. When we chose to do that, it was our view that we should fully recognize that a disfigurement is of itself a serious impairment and should be included within the definition of impairment rather than treated as an add-on.

Miss Martel: Now, is the section that presently allows for compensation of disfigurement under a different section going to remain in the act?

Mr Clarke: No, section 45 is gone because of our replacing section 45.

Miss Martel: Okay, so the whole thing is being taken out when we replace the dual award system with that section.

Mr Clarke: Yes, that is right. We incorporated it this way to fully recognize it.

Miss Martel: All right, so what you are hoping to do then is to take out some of the discretion, because under the current act it may or may not have been allowed.

Mr Clarke: That's right.

Miss Martel: I have another question; actually, two more questions. Are we counting stress under this particular category as well?

Mr Clarke: Stress, in and of itself, is not compensable, but in fact what we are looking at is whether or not there is any physical or psychological loss resulting. If there is an impairment that the worker has as a result of the accident, that is there.

What we have done in clause 1(a) is make specific reference to the psychological damage that results from the abnormality or loss.

If what you are asking is whether the stress that is related to having the actual impairment results in some sort of psychological damage, then that in itself is compensable.

Miss Martel: No, it is not quite what I was looking for, because I

would consider that a worker can get compensation in recognition of the psychological problems arising either from the course of the injury or from the loss that he experiences. That is usually paid in a lump sum provisional award, two years or whatever. But as far as I am aware, the condition of stress itself which results in time lost from work has also been compensated at the board. It may need some clarification, but I assume that stress, by itself, standing alone, could also be compensated and people could receive lost-time benefits for that particular condition alone.

I would see it as two different—I do not want to say "losses"; two different types of disabilities. That is why I am wondering if the question of stress itself and payment of lost time for stress which is caused by work, as for traffic controllers, for example, is covered under the broader definition of "impairment."

1710

Mr Kormos: Can I make my motion? I am sorry, you were waiting for an answer. My apologies.

Mr Clarke: If I might have a minute to respond to that question, you might want to go on.

The Chairman: Yes. It might be helpful.

Mr Kormos moves that clause 1(1)(la) of the act, as set out in subsection 1(3) of the bill, be amended by inserting before "loss" in the third line, "any physical or functional."

Mr Kormos: That would result, in so far as I am concerned, in it reading, "...means any physical or functional abnormality or any physical or functional loss."

As I say, I think that is important. I think it cures an inherent problem in the wording of the clause. It ensures that the phrase "physical or functional" is as applicable to the word "loss" as it is to "abnormality." In view of that, I would encourage members of the committee—

Interjection.

Mr Kormos: Can amendments not be moved one at a time?

The Chairman: Mr Kormos has moved an amendment to clause 1(3)(la). Now that it has been moved, do you wish any further debate on the amendment or do you wish to vote on the amendment to this section first?

Mr Dietsch: Before we enter into any debate, I am wondering if legal counsel will give us a reading on that amendment; the opinion as to whether it is just an additional use of words or does it change the context.

The Chairman: Without embroiling you in a political debate, of course.

Mr Dietsch: Of course.

Ms Hopkins: Grammatically, it is not clear whether the words "physical or functional" modify simply "abnormality" or whether they can also modify the word "loss." The amendment clarifies the grammatical ambiguity there.

In terms of interpreting the definition, I think that "loss" would be read as being modified by "physical or functional" by virtue of the context here. So while there is a risk that it might be read so that "physical or functional" only refer to "abnormality," I think the risk is small. As a drafter, I do not think it is necessary to repeat those words, but it is not my call whether we take the risk or not.

Mr Dietsch: I understand that, but I am just wondering about the interpretation of whether this is in fact necessary or not.

Miss Martel: We might as well deal with this one first, because there are probably going to be a few more, but if legislative counsel has clarified that and that is acceptable to Mr Dietsch, that is fine with me.

Mr Dietsch: I did not hear the last part of what you said. I am sorry.

Miss Martel: It was nothing slanderous. I said if you agree with that and were satisfied with the response, that is fine with me.

The Chairman: Is the committee ready for the question on Mr Kormos's amendment? No? You want a 20-minute recess? So we will come back at 5:35. Agreed?

Mr Dietsch: No, at 5:34.

The Chairman: I think, Mr Dietsch, if you look carefully—

Mr Dietsch: If you stall any longer, Mr Chairman, it will be on—

The Chairman: We will return at the appropriate time after a 20-minute delay and have a vote of Mr Kormos's amendment.

The committee recessed at 1715.

1735

The Chairman: We are back in session.

Mr Kormos moves that clause 1(1)(1a) of the act, as set out in subsection 1(3) of the bill, be amended by inserting before "loss" in the third line "any physical or functional."

The committee divided on Mr Kormos's amendment, which was negatived on the following vote:

#### Ayes

Kormos, Martel.

#### Nays

Brown, Dietsch, Lipsett, McGuigan, Stoner, Tatham.

Ayes 2; nays 6.

The Chairman: We now should deal with the section as is in the bill, clause 1(1)(1a). Miss Martel?

Miss Martel: So you are not going to vote on that right now, are you? Is that what you were going to do, Mr Chairman?

The Chairman: We have to deal with it. Is there any further debate on it?

Miss Martel: Yes, there is.

Mr Dietsch: Can I ask you a procedural question, Mr Chairman?

The Chairman: Certainly.

Mr Dietsch: We have dealt with an amendment to a motion. I am just curious to know, are you willing to accept the motion now that we deal with subsection 1(3)?

The Chairman: Wait a minute now.

Mr Dietsch: Can we deal with that now? (Inaudible) accept the amendments before you deal with the amending motion. There was no motion on the floor for the acceptance of subsection 1(3), or was there? Am I in error there?

The Chairman: No, there was no motion on subsection 1(3). What was before us was the amendment on a subsection of 1(3), namely, clause 1(3)(la), and that was defeated.

We are still dealing with the entire subsection 1(3). I am sure that answers your question. Is there anything else on subsection 1(3)? I think there is.

Miss Martel: Yes, I am waiting for a response concerning my question on stress.

Mr Clarke: I am sorry. What was the question?

Miss Martel: The question I raised was to ask if the condition of stress, in fact, was included in this particular definition of impairment. I used the case of compensation being permitted for stress for a worker who was not going to get a permanent pension, as he would for psychological damage, but someone who would be off work for stress for maybe four or five weeks and receive temporary benefits during that period and then go back to work without a pension.

The question I asked was if stress, in fact, was going to be covered under the definition of impairment and/or wear.

Mr Clarke: I would just like to thank the chairman and the committee for their indulgence for giving me a minute to respond to this.

What clause 1(3)(la) does is define "impairment." In other words, the impact on an injured worker does not speak to the cause of that impairment. The question of whether or not stress is a cause of a workplace injury has not been determined. This part of this definition is not meant to deal with cause; it is meant to define what we mean by impairment, the actual impact on the injured worker. So the answer to Miss Martel's question in that limited sense is no.



The Chairman: That was a succinct explanation. We thank you for that.

Miss Martel: You were looking for the result of whatever the consequences were of the workplace accident itself?

1740

Mr Clarke: Yes, members of the committee may appreciate that the driving clauses are under the current act in subsection 3(1), which says—sorry, I am not sure what page it is on in the red book—that where in any employment to which this part applies personal injury by an accident arising out of or in the course of employment is caused to a worker, then the worker and the worker's dependants are entitled to benefits under this act. Some of those benefits hinge on whether or not there is an impairment. That is all this section deals with: what is an impairment, not what is the cause of the impairment. So the question of whether what we call stress associated with work is the cause of a workplace injury and thus the cause of a resulting impairment is yet to be determined and the statute does not try to define this

The Chairman: In other words, stress is something that may cause an impairment but is not an impairment in itself.

Mr Clarke: It is not an impairment in itself. That is right.

Mr Kormos: I am wondering, then, what "psychological damage" means as included in this paragraph. There is no definition of psychological damage in the existing act.

Mr Clarke: That is correct. There is not, to my knowledge, a definition of psychological damage. What we intended here was simply the fact that the worker has an impairment, a physical or functional abnormality, can result in what we commonly understand to be a psychological impact on the worker; it can cause a psychological impairment. That is not stress. As I said earlier, and this is where we get into terrific semantic difficulty, it may be that what we would commonly say is "Hey, this worker has an impairment and because of that, that has put stress on that person and that has caused a psychological impairment." That may be, and if that person has psychological damage as a result of all of that, then that is an impairment, but it is not the stress per se that is the impairment.

Mr Kormos: That is why I am asking you, what does psychological damage mean?

Mr McGuigan: If you work in a zoo and get tossed about by the elephant, after that you would be scared to go around an elephant.

Mr Kormos: Precisely, and I appreciate that, because that is called anxiety and anxiety is not psychological damage according to the reference books I just looked at during the last break. That is why I am concerned about the phrase. What I am saying is that I think I know what is intended here, but it ain't being said by the words "psychological damage."

Mr Clarke: If I might, I will try and answer in a somewhat different way, in a practical sense. If a treating physician is of the view that a worker has some psychological damage resulting from a workplace injury, then when subsequently the board or the worker selects a physician to actually do an assessment of the worker as to his impairment—and you will appreciate that in the bill we say that the medical practitioner undertaking that assessment

is to pay particular attention to the report that has come from the treating physician—and as a result of that the medical practitioner believes that a psychological assessment is also necessary, then he can call on psychologists to do that. They will determine whether or not there has been psychological damage.

Mr Kormos: Except that still begs the question. I appreciate that we toss around the phrase "psychological damage," speaking just casually. Psychologists do things like assess learning disabilities; they do things like assess psychological dysfunction; but I suspect very strongly that the phrase "psychological damage" is one that, again, down the road could be interpreted in such a way as to exclude most of the things you are speaking of, especially when you say that psychological damage is something a psychologist can measure.

I will tell you this: Psychologists measure stress a whole lot, yet you are suggesting it was not contemplated that this paragraph would encompass stress, and stress is manifested by anxiety, stress is manifested by any number of traits of dysfunction.

As I say, we cannot just go around plucking convenient phrases. I suspect that the phrase "psychological damage" was thrown in here without ever consulting anybody in the medical profession, especially a psychologist or what have you, to ask: "What does that mean? What does that encompass?"

We know that psychologists, for instance, also diagnose personality disorders. Is the development of a personality disorder going to be entailed here?

As I say, we are using a phrase that has some common parlance, but is so often—

The Chairman: Go ahead.

Mr Kormos: I am sorry, I am concerned that some of the other members of the committee might not be able to hear me.

The Chairman: Members of the committee are going to have to vote on this section, so if they are not paying attention, they may not make the right decision when it comes to the vote.

Mr Kormos: Thank you, Mr Chairman.

What I am concerned about is that we use common parlance like that. Where did it come from? Did somebody just throw this in and say, "Okay, fine, everybody knows that is what we mean it to mean"? It is that old "say what you mean and mean what you say" sort of thing.

As I say, I strongly suspect that nobody consulted anyone who would know the proper way of defining—What I am saying is, I will bet my boots that "psychological damage"—

Mr Tatham: What kind of boots?

Mr Kormos: —and I will give odds that "psychological damage" has no currency in the psychological or psychiatric or medical profession. What I am saying is that if you asked a psychologist what psychological damage is, he would say: "I don't know. It is something you people who don't know anything about psychology talk about all the time, but it is something we can't quantify or define or deal with."

I suspect one could put in here a nonexhaustive list of things the clause is attempting to confront. I suspect you could talk about affective disorders; I suspect you could talk about stress, anxiety, emotional—You see, I checked to make sure there was a distinction between emotional damage and psychological damage. Lo and behold, there is a distinction, and if there is a distinction, that means the one excludes the other, so when you talk about psychological damage you are not talking about emotional damage. That is really pretty frightening.

Let's go one further. Let's take this misnomer, if you will, of "psychological damage" and put that on the side burner for a moment. Just look what this clause says and how restrictive and unfair this is to people who are injured. It talks about psychological damage when in fact it wants to talk about a whole pile of other things. Really, it looks as if what people were trying to do was talk about physical or functional loss, functional abnormality. But if the drafters were saying and indeed the committee is saying that what has to be dealt with here is everything other than physical or functional, I would say okay.

1750

I simply should ask the parliamentary assistant where this phrase "psychological damage" came from. Did this come from appropriate sources so that we know what it means, so it is definable? If it is not, did somebody just think it was going to mean what they thought it meant?

Mrs Sullivan: There are a couple of things I want to speak about in relationship to this section. In the first case, the impairment definition relates to the noneconomic loss provisions in the bill. The use of the words "psychological damage," you will note, are followed by the verb "arising from the abnormality or loss," referring to the physical or functional abnormality or loss.

I think it is very clear, and we certainly know that frequently after an injury of a serious nature, there can indeed be psychological damage. Indeed, psychologists are part of the medical team now involved in delivery of services to the injured worker, depending on the type of injury and the nature of the loss the injured worker has suffered. In the course of discussions relating to the bill, psychologists have looked at the provisions and they have indicated no difficulty with that phrase. In my view, it is a legislative drafter's phrase, but there has certainly been no information from the practising psychologists themselves that there is a problem with this section.

Mr Kormos: I feel compelled, then, to move an amendment, Mr Chairman.

The Chairman: An amendment to clause 1(3)(1a)?

Mr Kormos: Yes. Clause (1a) and—

The Chairman: Do you have this worked out yet? While you are working on it, Miss Martel wanted to make some comments. Would that be appropriate?

Mr Kormos: Yes.

Miss Martel: The comments I make fall in the same section Mr Kormos is dealing with, although I do not want to deal with the wording around "psychological damage," which I am sure he is going to do. My concern comes out of this perception; actually, let me try to explain it using some examples



As I read the last section of that particular section, it seems to me that what we are insinuating is that psychological damage would only be arising from either the abnormality or the loss. My concern is that if an injured worker has psychological damage or whatever you want to call it, it would not only result from whatever abnormality he now has—whether it be some kind of heart condition or whatever which then leads to further psychological problems, or whether he has some kind of loss concerning a heart condition or a loss of a limb perhaps and then develops psychological problems because he is trying to deal rationally with the loss of limb—but that worker also would suffer psychological damage which came from the very nature of the accident itself or the circumstances surrounding that accident.

Let me try to give you two examples. Mr McGuigan did raise one, although he may have been facetious about it, but actually it was a good example concerning the zoo.

We have an injured worker in our office who worked in the mine but also worked in the shaft, and by the shaft I mean up and down. What happened to him was that actually two years ago it broke and it plummeted some several hundred feet and he ended up with two broken legs, crushed kneecaps, etc. In time, his legs are going to heal and he will probably get a pension for the legs and the damage done, but now, as a result of having the shaft fall, he does not want to be in elevators any more and cannot bear to be in any kind of elevator, escalator, that kind of thing, because he now has a fear he never had before that something is going to happen to the operation of that machine.

We have a second gentleman who was a bush operator, driving logs, who went off close to a sand pit and almost drove the truck off the road, then tumbled down the side of the embankment. He suffered some soft-tissue injury to his neck. That has all been cleared up, but now he cannot be in a car, and he cannot have any appliances in his house, because the mere fact of something mechanical scares the living daylight out of him and he will never work again. That was a case that was used as training when I was at the board. That gentleman has a 100 per cent psychiatric award, because he will never work again, his whole life has just been shattered, etc.

The point I am trying to make is that if you read this particular sentence, we are allowing for psychological damage to arise: (a) from a worker's abnormality, which now comes from his accident; or (b) the loss, be it of a limb or an eye or whatever, which comes from his accident, but we are not allowing for that damage to come from the accident itself and the circumstances surrounding that particular accident itself.

I am wondering if I can get some response from either the parliamentary assistant or Mr Clarke concerning why that was done—it may just be an oversight—and if there is some way we can in fact incorporate psychological damages arising out of the circumstances of the accident itself and not any loss or permanent damage, physically or functionally, that was done to the worker.

Mrs Sullivan: Could we just take a minute to talk about this? Perhaps we can proceed with Mr Kormos's motion while we are doing that.

The Chairman: Does anyone else wish to speak on subsection 1(3)?

Mr Kormos: Perhaps I should comment on what Miss Martel has to say, because she is quite right, once again. She points out that the nonphysical damage that is going to be considered to constitute an impairment is only that nonphysical damage arising from the abnormality or loss.



There are a whole lot of injuries that are compensable injuries, and rightly so, which fortunately are not permanent injuries; I am talking about the physical trauma, the broken bone and so on. However, there may be and oftentimes is a case, as in the two illustrations and the parable of the zoo worker and the elephant Mr McGuigan spoke of, where indeed the zoo worker will at some point, hopefully, recover from the broken bones of the toss by the elephant. It was not the incident of the broken bones, it was not the incident of being in traction, it was not the incident of the metal pin being inserted to mend or help mend his bones, it was the accident itself that generated incredible psychological or emotional or affective damage.

Surely when this legislation was being drafted, that is what the government wanted to put in this particular clause. Surely the government wants nonphysical damage, loss—because that is what damage means; the Oxford dictionary says "damage" means "loss"—to be among those things for which people receive—Especially in this section, which deals with nonpecuniary loss. This is what I am told is what it is all about. This is what the government is hanging its hat on. They are riding this horse as far and as fast as they can.

This is the clause that is supposed to be showing those injured workers that the government really cares; not only the illustrations of Miss Martel but I suspect the injured workers who have contacted any number of members' offices and told the incredible and sad but true narrations of what happens in the course of an accident.

I also took a look, and I am glad that accident was defined in the existing act.

The Chairman: I hate to interrupt you, Mr Kormos, but in view of it being six o'clock, could you conclude your comments tomorrow afternoon at 3:30?

Mr Kormos: I shall try, Mr Chairman.

The Chairman: Okay. We shall adjourn and we shall be in session again tomorrow afternoon at 3:30.

The committee adjourned at 1800.

CA20N  
XC13  
-578

R-10

STANDING COMMITTEE ON RESOURCES DEVELOPMENT  
WORKERS' COMPENSATION AMENDMENT ACT, 1989  
THURSDAY 22 JUNE 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Kormos, Peter (Welland-Thorold NDP) for Mr Wildman

Roberts, Marietta L. D. (Elgin L) for Mr Brown

Clerk: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

Witness:

From the Ministry of Labour:

Clarke, Richard, Manager, Policy Branch, Labour Policy and Programs

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 22 June 1989

The committee met at 1534 in room 151.

WORKERS' COMPENSATION AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Section 1:

The Chairman: The standing committee on resources development will come to order. We were on subsection 1(3), as I recall. I think Mr Kormos had the floor. Did you wish to continue?

Mr Kormos: Yes, please. As I recall, what had happened was Miss Martel was talking about the causation of the psychological damage. I was agreeing with her wholeheartedly—

Miss Martel: Good thing.

Mr Kormos: —that, as the paragraph reads now, psychological damage is restricted to that "arising from the abnormality or loss." Several people tried to illustrate how that was so horribly restrictive and how, in our opinion, it was not the original intent of the legislation to restrict psychological damage. Yes, we had earlier discussed the whole matter of psychological damage, which was restrictive, in our view, in itself, but then it goes on. There are really two issues here.

If you will recall, what had happened was I had indicated that I was prepared to make a motion to amend this paragraph to deal with the restrictive words "psychological damage" and while I, with the assistance of counsel, was in the business of preparing that motion, the chair asked Miss Martel to proceed with her concerns about the, I think, aetiology of the psychological damage.

In any event, I would ask that I be permitted to make this motion now. This motion addresses what I had spoken to earlier, not what Miss Martel was speaking to.

The Acting Chairman (Mr McGuigan): Mr Kormos moves that clause 1(1)(1a) of the act, as set out in subsection 1(3) of the bill, be amended by adding at the end thereof "including emotional damage and affective disorders."

Mr Kormos: The clerk has that motion now. Once again, that is what we had started discussing. I had some real concerns that the phrase "psychological damage" was horribly restrictive. I had some real concerns that it would permit tribunals and arbiters and persons making decisions under this act in the future, if indeed the act is passed, to limit the scope of consideration because the phrase itself can be interpreted so very narrowly. It is not defined anywhere and that is unfortunate. By adding the short phrase that I have, I have attempted to broaden the scope of what is considered psychological damage.



Once again, very briefly, we all in our own minds use the phrase "psychological damage" intending it to mean, as I understand it, that whole range of nonorganic, nonphysical disorders. However, although we may tend to use that language in common parlance, a trier—a tribunal, an arbiter or a person who is compelled or whose jurisdiction is limited by what is stated in the statute—may not be prepared to give the same liberal scope to the phrase. What we are doing is helping them a little bit. We are saying "including emotional damage and affective disorders."

That is not an exhaustive list, but what it does, in my view, is permit the person hearing, the person making the decision to say, "Look, obviously they did not consider or anticipate or intend that this be very narrowly construed to what some doctor or the American Psychiatric Association or something like that might say is psychological damage," which could be a very narrow range of disorders and problems.

The Acting Chairman: Just for my own information, and I think for the committee's, if psychological damage is not defined in the parlance of the legal profession, then would that not by extension mean it was broad rather than narrow?

1540

Mr Kormos: If it was, all right, and that remains to be seen. I checked, among other things, the Oxford English Dictionary to see what "damage" means and to see what "psychological" means. I agree with you that if there were case law that said, "Psychological damage includes everything from soup to nuts," then we would be home free and it would be as short and simple as that.

I do appreciate Mrs Sullivan indicating that they had consulted with medical types to see whether the phrase "psychological damage" was an appropriate phrase. But we still have not been told what it means and we have not been comforted. So in that regard, we are not hurting anything; we are helping things. We are saying "including other things."

I suggest we are inviting arbiters to take a broad, open look at it rather than a narrow, restrictive look and to take an approach whereby they say, "Let's look at what was really intended by these people." The words that I have suggested would expand the intention, I suspect, rather than restrict the message that is to be given as to intention.

I would urge acceptance of this motion. I think it would more truly give effect to the intention of the legislation.

Miss Martel: I want to speak to the motion moved by my colleague because I think he is quite right in his concern that in fact what we have here is a narrow, restrictive interpretation or definition of the particular word. I know Mrs Sullivan has said that in the drafting of the bill, the ministry did consult with psychologists, I think she said yesterday, to see if this was an acceptable term. She has assured the members of this committee that the term is acceptable.

The problem that I have is that we have not been given any idea of what that acceptable definition is; what is included under the umbrella or definition of "psychological damage."

Perhaps if we as a committee had been given that information and told

what the board would accept under the umbrella of that term "psychological damage," I would be a little happier. But given that we have not been given that information in any way, shape or form, I would much prefer, as a member of this committee, to allow the broadest possible interpretation of that particular clause so that we limit as much as possible board discretion in this regard.

Members of the committee will know that we heard many times during the course of the hearings that there is a great deal of discretion now in the present act and that under the new bill there is even more, which is only going to result in further appeals through the system and to the Workers' Compensation Appeals Tribunal. If that is indeed the case, then I, for one, want to give WCAT the greatest leeway possible in terms of the parameters it can move within when it is going to have to make determinations about the term "psychological damage": what that includes, whether that is impairment, what type of compensation will be provided, etc.

I prefer the motion that has been moved by my colleague because it does what we had hoped, that is, limit what we think is going to be a very narrow board interpretation of that particular clause.

Members will note that Mr Kormos has included both "emotional damage" and "affective disorders." It is our hope that under those two conditions, most conditions that injured workers would suffer and be compensated for would then be recognized under the term "impairment," and they would be categorized or classified under that particular term.

I think that what we have tried to do is give the broadest interpretation possible and to limit what we think will be a very narrow interpretation on the part of the board. Given that we have had no idea of what comes under the umbrella of that particular clause, "psychological damage," because we have not been given that information from the ministry, then what we are doing is protecting ourselves and future injured workers, in hopes of allowing the greatest number of people possible to qualify under that particular section.

I think it is a good change that will make a much broader interpretation possible and allow more people to qualify. I hope that my colleagues in the Liberal back bench will support this motion.

The Chairman: Are there any other comments on Mr Kormos's amendment to subsection 1(3)? If not, are you ready for the question? I do not hear a no

Miss Martel: No. I would like 20 minutes.

The Chairman: All right, we shall vote on this at 4:05.

The committee recessed at 1546.

1405

The Chairman: The committee is back in session. Mr Kormos had moved an amendment to subsection 1(3). Are you ready for the question?

Miss Martel: A recorded vote.

The committee divided on Mr Kormos's motion, which was negatived on the following vote:

Ayes

Kormos, Martel.

Nays

Dietsch, Lipsett, Roberts, Stoner, Tatham.

Ayes 2; nays 5.

The Chairman: Is the committee now ready for the question on subsection 1(3)?

Miss Martel: No, Mr Chairman, we are not ready. I know that is a surprise to all of you, but we are not ready. There are a few other details.

We are going to move another amendment arising out of some of the discussion that has gone on concerning psychological damage and where it arises from.

The Chairman: Miss Martel moves that clause 1(1)(a) of the act, as set out in subsection 1(3) of the bill, be amended by inserting at the end thereof "or arising from the accident."

Do you wish to speak to your proposed amendment?

Miss Martel: Of course. Yes, I do. The reason we are moving this comes out of the initial discussion we had late in the day yesterday about how psychological damage can occur. In reading through the proposal here, that is found in the definition of impairment.

It seems to me that what the definition states is that psychological damage would now only arise out of two incidents: (a) the abnormality of the worker after he has suffered an injury, or (b) psychological damage arising because the worker has to contend with the loss of limb or whatever he now suffers from as a result of the injury. It seems to me that the clause as written allows for psychological damage and, later on, what would be entitlement, only in those two cases.

The point I was trying to make yesterday was that in fact there are more than a few cases which have been successfully fought at the board to allow for psychological damage which arises out of the course of the injury itself and has nothing to do with the abnormality or the loss the injured worker will continue to suffer from. I am making the case that the damage that can arise or the psychological problems the worker will now suffer could well come from the circumstances surrounding the injury he has suffered.

I gave two examples yesterday. The first—I should not have said the "shaft" yesterday but "cage"—was where the cage plummeted down several hundred feet and now the gentleman has a fear of going into elevators again. The second case was of the gentleman who almost drove the truck off into the gravel pit, and now cannot drive and cannot have any mechanical devices in his home whatsoever because he has a tremendous fear and these things drive him crazy now, so that in effect he has a 100 per cent psychological award from the Workers' Compensation Board to compensate for that. The first gentleman has a pension for damage done to his legs at the time of the accident, but also psychological damage, because of his innate fear now of elevators and other mechanical things and the fact that he will never again work in a mine or go underground.

1610

The point I am trying to make is that what we are doing in this particular section, with this wording, is limiting how and when psychological damage can occur and the manner in which that psychological damage occurs and will be recognized. If we are going to look realistically at the situation and look at what the board has already provided compensation for, we will see that the case has been made that psychological damage can arise from the circumstances surrounding the accident itself, and there does not have to be only psychological damage which arises because of the organic damage done at the time of the accident.

I am suggesting to members of this committee, therefore, that we broaden this particular definition and in particular the reference to psychological damage in the manner I have described. If we do not do that, I think we are going to have some serious problems with workers who, after they suffer their injuries, have organic damage done and mend from that and are left with psychological problems the board will not want to recognize as a legitimate impairment.

In the cases I have described, those people will never return to their former employment again. One will never work again, period, but the other certainly has a need for substantial vocational rehabilitation if he is ever going to return to a productive lifestyle once more.

In my opinion, the way the present wording stands, that second individual would be cut out completely from that opportunity, because the board would say: "His organic problems are over. His leg has mended. His stitches have been removed. He doesn't have a loss or an abnormality, therefore he's not entitled for psychological damages," or "His psychological damage will not be compensated, because it arises from something other than the abnormality or the loss."

I think it is incumbent upon this committee to broaden the definition, because the present wording is restrictive and does not reflect the reality at the board now, that is, that workers do suffer from psychological damage which arises out of the course of the accident. They have been compensated for that, but that is not reflected in this particular definition of impairment.

So I am moving that we include that to make it a much broader definition to reflect the reality of what is happening at the board right now.

Mr Kormos: Again, I support this motion. I have made a couple and Miss Martel has made a couple in the afternoon and a half I have been here. I am prepared to concede that these are but ideas, an effort to either improve the legislation or make it read as what it was intended to read.

As I say, I would be more than pleased to hear from any of the government members on these proposed amendments. If we are wrong, by all means demonstrate it. Show me. At the very least, I think it is a horribly important thing in this process, and in probably virtually any other, that when an issue is made by virtue of an amendment the parties articulate their reasons for either supporting or opposing that amendment.

To simply present an amendment and vote on it would be virtually nonsensical. It would be creating a sham out of this whole process. The purpose of meeting in committee as compared to the whole House is so that there can be a dialogue, among other things, an exchange of ideas, the



overriding spirit of co-operation, with the goal in mind of creating the best possible legislation.

I say it is important that government members articulate why they will be voting the way they will be voting. I cannot speak for Miss Martel, but I can certainly indicate that I am not dogmatic. I am more than prepared to be persuaded of the fact that what I am suggesting perhaps is not the most appropriate way to deal with the matter, but I would enjoy the opportunity of hearing the wise words of the government members with respect, among other things, to these amendments; and, obviously on the section itself, once we get down to the matter of voting on the section, as amended or not amended.

In any event, the discussion about this problem arose yesterday. The word "accident" is included in the amendment and it is nowhere else in clause 1(3)(la). The word "accident" is not mentioned anywhere else in the definition of impairment.

However, it is mentioned in the Workers' Compensation Act in section 1, the definition section. It says, "'accident' includes." It does not say, "'accident' means." It is another one of these nonexhaustive definitions. My understanding is that when it says "'accident' includes," that means "accident" means the following things, but not necessarily only the following things.

"1(1) In this act,

"(a) 'accident' includes,

"(i) a wilful and intentional act, not being the act of the employee,

"(ii) a chance event occasioned by a physical or natural cause, and"---quite simply and very broadly--

"(iii) disablement arising out of and in the course of employment."

The clause as written in the bill would suggest that impairment "means...any psychological damage arising from the abnormality or loss." Abnormality or loss refers to the abnormality or the loss in the earlier part of that definition.

I guess this amendment could have been made in one of two ways. Here it is made in this way, and it is probably the better way, because the other way was to start tinkering around with the word "arising." It could have been "related to the abnormality or loss," but that would not be anywhere near as precise as the amendment that has been proposed here.

As it is written, without the amendment, any consideration of psychological damage has to restrict it to that psychological damage that arises from the abnormality or loss. It would not be the fall down the flight of stairs and the trauma inherent in that for which the board could consider psychological damage. It would have to be the psychological damage flowing from the actual broken back.

It would not be, in the example, the shaft experience, the horror, the terror, the extraordinary experience few of us have ever had to share, thankfully, of a cage dropping at an incredible speed, the operator of it or the passenger in it having no control over the outcome.

I suspect that in the original drafting of this and as it is contained in Bill 162 the intention was not so cruel, was not so uncaring, was not so callous and cold as to intend that only psychological damage arising from the abnormality or loss be considered when one is considering impairment.

I suspect the only problem here and the only problem that is being corrected— This is not some sort of devious, fifth column attack on the bill. This particular amendment is one that has as its intention a bit of cleanup; that is, as I understand it, more than appropriate in the committee stage.

#### 1620

We know how difficult it is to initiate amendments when flaws are discovered after the fact. First, there is the lengthy period of time it takes to get the matter back before somebody in the Legislature. There could be all sorts of occasions where there is a proper application of the act but one that was not intended by the original drafters, with sad, disastrous, tragic results for the subject, the person who is seeking help under the act, without its ever getting back to the Legislature. It will take that case—it could be the 10th, the 20th or the 100th misapplication of the intent—for it to get to the Legislature, and then you are talking about a whole long difficult process in itself to clean up the legislation.

All that is being done here is talking about psychological damage, and it really does not dismiss a consideration of psychological damage arising from the abnormality or loss.

I reflect on the young man in my own community who worked at General Tire, a small company there. He was a Niagara College student taking a business course. He had no intention of pursuing a factory career, but he was working really hard in the summertimes in this factory. It is difficult work. People who have worked there or who still do work there acknowledge that it is difficult and sometimes dangerous work.

Here is a young man with no intention of ever pursuing a factory career—again, there is nothing wrong with factory careers—who lost the four fingers off his left hand at the age of 19 or 20, midway through his Niagara College program, and all he wanted to do was get his business administration diploma so he could ultimately do the type of work that is designed to permit him to do, which would entail office work, business advice and those sorts of things.

Here is a young man who, because he was industrious, because he did care about his education, is going to spend the rest of his life with the four fingers missing from his left hand. Quite frankly, in many respects he is going to cope. I can tell you he has carried on with his diploma. He has now found work which is industrial work but not on-the-shop-floor kind of work.

He came and saw me a couple of years ago. I had to explain to him what I understood to be the impact of the Workers' Compensation Act. It was something we talked about a little while ago, something Professor Weiler commented on in that 1980 report about the tradeoff of the right to sue. When he told me about the situation, I thought: "Holy zonkers, if this were in another jurisdiction where they didn't have workers' comp, with what you've described to me about this machinery and the lack of safety devices and safeguards and so on, if you were in some of the American jurisdictions or in a different era, you'd be talking about suing people and talking about big damages, but you're not. That's been traded off for compensation under the Workers' Compensation Act."

I talked to him and learned that he liked playing hockey. That was one of his great joys in life, and he had been doing that since he was a little kid and carried on doing it. He recognized that his hockey game was not going to be what it used to be, no two ways about it.

He was single and he realized already the whole prospect of talking to a young lady and carrying on a conversation with her. Inevitably, at some point, be it sooner or later, her eyes would glance down to his hand and she would see this mutilated hand with but a thumb sticking out of a fingerless stump. Once again, that created some really sad, difficult prospects for him. The reality is that he would have to find an exceptional person who could tolerate or live with the mutilation that had occurred.

There is an instance where psychological damage can easily be seen as arising—And not just damage to be compensated, but damage that calls out for rehabilitative services, damage that calls out for counselling, and counselling of a broad type. We are looking at a whole pile.

It is fascinating to think about what the helping professions could do for a young man like this, because he would need a whole lot of adjustment— and these things may seem silly to some people—anything from helping him adjust, if it is at all possible, to playing on his hockey team again, something that was very important to him and important to the community, something about dealing with the fact that—

Mrs Sullivan: On a point of order, Mr Chairman: I think that to a certain extent Mr Kormos is speaking about the real reason we are introducing a non-economic-loss award rather than to the motion specifically before us. In fact, he is giving quite a good justification of the non-economic-loss award, but perhaps he could speak to the motion before us.

Mr Kormos: Thank you, Mrs Sullivan. We could look at perhaps an endless range of services and helping professions that could address themselves to this young man.

Interjection: Mandatory rehabilitation.

Mr Kormos: There you go. I am glad Mrs Sullivan raised that because what we are talking about here— and I am going to digress for a moment to respond to what she had to say because what she has done is she has —

The Chairman: She made a good point.

Mr Kormos: What Mrs Sullivan has done is brought me back on the straight and narrow here, which compels me to talk about the fact that this amendment does not detract from the legislation. I am indeed pleased to hear her say what she did, because it does not detract from it; it ensures that the legislation at least goes a little bit towards doing what Mrs Sullivan says she wants it to do. We have got this young man, the hockey player, working at General Tire part-time in the summer, temporary, losing the fingers off his left hand.

As Miss Martel and Mr McGuigan both so eloquently put examples yesterday, and Miss Martel again today, you have got situations where the trauma does not result in that level of, let's say, disfigurement. Mind you, there is no disfigurement—"disfigurement" is so bothersome because I am not aware of any, and that is something we will be dealing with either later this afternoon or tomorrow. Tomorrow is Friday; perhaps Monday. Disfigurement

causes me some concerns. That is—holy cow—one that is going to warrant some consideration and discussion.

You have got scenarios, unlike the young man with the, let's say, quantifiable disfigurement, the quantifiable long-term injury. But let's talk about the person who does not have quite such a quantifiable injury, loss or disfigurement but who none the less, as a result of the incident—because that is how accident is defined, by inference, because "accident" includes, (i) a wilful and intentional act, not being the act of the employee."

The Chairman: I am sorry; I missed that, where it is defined by inference. Where is that?

Mr Kormos: In section 1. Inferentially, it means an incident.

The Chairman: I see. Okay.

Mr Kormos: There has to be an incident for there to be an accident. Accidents are not just vague sort of things.

The Chairman: I was just intrigued by the thought that something could be defined by inference.

Mr Dietsch: There are lots of incidents without accidents.

Mr Kormos: They can be fixed in time and place. Boom. They are narrowed, they are isolated in time and place.

So you have got the incident, which is the accident, which may have short-term trauma types of injuries that may result in a relatively short period—fortunately, Lord knows—of recuperation in terms of the physical trauma and physical injury. But we are left with the cage occupant, we are left with the truck driver and we are left with the zoo worker. We are left with people who work in countless types of occupational situations where they are exposed.

1630

One of the difficulties is in sitting here and predicting them. That is the whole point of the exercise. On the one hand, many are predictable, but we are talking in many cases about the exceptional, the unanticipated sort of thing. That is in part what makes them so horribly traumatic for the victim. That is in part what would generate the psychological damage arising not from abnormality or loss, but from the incident itself, the accident.

That is something that is so essential to this legislation. Again, we are not writing new words here. The word "impairment" is not a neologism, it is a long-time common usage kind of word. Sometimes there is legislation where there is a creation of what is virtually a neologism, but here the definition is suitable to the word being defined. So what we are concerned about is the poor, tragic victim whose psychological state can be so altered by the incident which gave rise to the accident as to result in significant impairment of a psychological nature.

I am really anticipating Mrs Sullivan responding to this because she talked yesterday about stress. I guess as a parliamentary assistant with the government right now, she knows as much about stress as any of us ever will. We talked about whether or not stress was going to be included; we all talked about it. I thought that my own stress situation was—



Interjection.

Mr Kormos: I wonder if that would have been compensable.

She and staff, I believe, talked about stress not being included in psychological damage. I beg to differ, in view of the fact that this committee did not accept my motion including emotional damage and affective disorders. If this committee does not want stress to be covered, then it had better chuck this whole section, because if psychological damage does not entail stress, in my book nothing does. That is exactly what we are talking about. How best can you describe the state of psychological ill-being that flows from a serious trauma if you cannot talk about stress?

Mrs Sullivan: On a point of order, Mr Chairman: I do not believe the member's remarks now have a great deal to do with the amendment that is before us.

Mr Kormos: Quite right. Thank you.

The concern we have is whether or not the "psychological damage" that is going to be considered-- okay, I appreciate we are going to need another motion here as a result of what Mrs Sullivan mentioned--psychological damage has to be considered in the context of "impairment," not only the psychological damage which flows "from the abnormality or loss."

Mind you, this is all so very subjective. I appreciate that some people may not show any symptoms. All psychological damage is, compared to organic damage, is a demonstration of symptoms. Organic damage can be measured. They can do an X-ray and see that something is battered, bruised or broken; they can run little cameras into your blood vessels and find out what is happening in your heart; they can do computerized axial tomography scans and incredible things; they can open you up. If there is a trauma where there is an injury exposed, they can see it; the doctor can see the broken bone.

"Psychological damage," however, cannot be quantified in that way. I would beg to differ with somebody who said, "We can measure things like brain waves and so on." I think that is where you get into the real problem between what is organic and what is psychological.

Mrs Sullivan: Someone once said that a dog was man's best friend because he could not talk. I just would like it recognized once again that the member is straying from the content of the motion.

Mr Kormos: Mrs Sullivan is right again.

The Chairman: I would ask Mr Kormos to stick to the content of his amendment; not the entire section.

Secondly, just for my education, in case there is a tie vote and I have to vote on it, I was wondering if you could tell me, when you say, "arising from the accident," whether you are using the definition of "accident" as in the act. I assume that you are. Correct?

Mr Kormos: We have to; we have no choice.

The Chairman: Do you think that includes illness?

Mr Kormos: No, you are jumping ahead of us. We are going to get into that.

The Chairman: Just so I know, in case there is a vote.

Mr Kormos: Subclause 1(1)(a)iii in the act could resolve that concern because "accident" includes "disablement arising out of and in the course of employment." Whether or not that includes illness is a different story. To boot, it does not matter, because the concept of "impairment" could include "accident," but not necessarily exclude everything else. We will have to address that in due course.

Mrs Sullivan is right. I have a dog that is perhaps my best friend, if not my only friend, a male beagle around five years old who, because he is a beagle, speaks but strays incredibly. I guess there have been some comments made about dogs and their owners. Those observations people have made may well be true.

The Chairman: Is there anything further on Mr Kormos's amendment?

Mr Kormos: What I do for Charlie is keep him leashed.

Mrs Stoner: Charlie is the name of your dog?

Mr Kormos: Charlie is the name of my dog, yes. I will tell him you said hello.

To wrap up, it is a matter of recognizing this very simple proposition, that not all psychological damage is going to flow from the incapacity, the "disfigurement," the "abnormality" or the "loss." As often as not, the potential is there for serious psychological damage to flow from the accident itself which was the incident that gave rise to any of those things.

1640

I suppose some people might query this. May I ask, are you talking about--and I wish one of the Liberal members here would talk about this--a case where, let's say, somebody just had the bejabbers scared out of them and nothing else? As a result of a mishap, they were knocked over and frightened so thoroughly that it resulted in psychological damage. We understand that a near miss can result in psychological damage. Let's understand this right now: for psychological damage to arise from the incident, there does not necessarily have to be a de facto injury.

The Chairman: But this amendment talks about "accident" specifically.

Mr Kormos: Precisely. Just for the record, though, so that somebody down the road in interpreting this does not rely on what you say is restricting it, is it not an accident, because an accident means "a wilful and intentional act, not being the act of the employee, a chance event occasioned by a physical or natural cause"? Look at the case of the trucker who takes his truck to the edge of the cliff and it is teetering there. All right? That is a chance event occasioned by a physical or natural cause. There is no de facto physical injury to the trucker, but there is serious psychological damage.

Let's get this straight right now so that somebody down the road does not try to argue that and rely on the record of this committee hearing. I do not think any of us--maybe Mr Tatham and Mr McGuigan--had a hand in drafting this existing Workers' Compensation Act. This word "accident" and the definition of accident have been here for a long time. "Accident" is very purposely included in this amendment. It is not there by happenstance. It is

not there just by accident, if you will. It is very specifically there. That is why I made reference to the definition of "accident" at the beginning of my discussion.

The reason why I am explaining this is because I do not want the Liberal members here to be supporting this motion under any misapprehension. I want them to be completely aware of what they are voting for when they support the motion. I want them to be completely aware of the impact this is going to have on injured workers for years, indeed decades, down the road, if not longer. I want them to be completely aware that what they are doing is creating a situation which will more accurately reflect the real working world, the occupational world wherein an accident can generate psychological damage as readily as can any abnormality or loss flowing from an injury.

Not just the workers today, but their children and grandchildren will benefit from a consideration and acceptance of the motion moved by Miss Martel. Indeed, perhaps some of the members' own children or grandchildren will be the ones who will be able to thank their grandmother or grandfather for the wisdom they used in a committee meeting today in passing this motion. It is imperative that if the legislation is going to have the impact and effect that Mrs Sullivan speaks of, it is essential, even on a dog day like today, that we consider the motion affirmatively and appropriately and give passage to it.

Miss Martel: I was hoping there would be some comment from the Liberals as to what they thought of this particular amendment. I have not expected much comment on some of our other amendments, but the reason I say it on this one is because this whole question was actually raised by Mr McGuigan when he talked about the zookeeper yesterday. He made a very appropriate comment. I think he used an example of the worker being tossed by an elephant and that he would suffer psychological damage from that for ever and a day. Certainly that was not something I had thought about. It is not one of the cases we have in my office, but it does bring to mind another case that we do have that Mr Kormos talked about when he described the situation of a near miss.

In this particular case, we are dealing with a mine again and a gentleman who had worked underground for many years, this time not in Sudbury but in Elliot Lake. Now for this particular gentleman, his experience or his near miss came out of a rock blast that occurred underground while he was working underground, by himself, I might add. In his case, although he did not have any rock fall upon him, the mere fact that he was underground, that he was alone, that a rock blast occurred and that in the end he had to be pulled out of the rubble—he had no other injuries; no injuries that were apparent at the time—has left him completely incapable of (a) working underground again, and (b) he has a terrible phobia or fear now of any type of confined space. He has a terrible phobia as well of night or blackness or being in the dark and so has great difficulty now even considering where he would again be employed.

He certainly cannot return anywhere underground. He has great difficulty in being in confined spaces or spaces with a number of other people close to him and is now going to have a terrible time having the board try to rehabilitate him, if indeed the board determines that it is appropriate to rehabilitate him in the end. Of course, we do not know if the board will do that and it will not have to do that if this bill passes, either.

In any event, here was a person who did not suffer any visible breaks or strains, any type of thing that could be visibly seen, but certainly the

impact of that particular situation upon him affected him psychologically so that now he suffers from all of these other related problems I have outlined, making him, if the truth were to be known, probably completely unemployable ever again.

The other important point that Mr Kormos raised was to say that certainly the drafters of this legislation were probably just sloppy in this particular case in not including in this particular section the possibility that psychological damage could arise from the circumstances of the accident. In fact, he made it a point to say that surely ministry staff or the drafters of this bill could not have been so callous or could not have been so cold as to purposely or intentionally limit this particular section.

It was not something I had thought about before, but in fact it could be that, yes indeed, the drafters were looking to purposely limit and purposely restrict this whole question in this section of the act. Certainly it is difficult now at the board for injured workers to be awarded damages for psychological problems, especially when there are no other problems that they suffer from; that is, broken legs, etc, or any residual impairment that remains in terms of a loss of the ability to function, a complete loss of a limb, etc.

1650

The experience at the board already has been that for workers who are trying to apply for psychological damage because of the circumstances of their accident and workers who have no other organic problems, it has been very difficult for them to be awarded that type of compensation. It may well be that what the drafters have tried to do is limit that even further to the point of actually disqualifying those people unless those individuals can prove that their psychological damage comes from a loss that is easily visible or a functional or physical abnormality, which would mean a residual disability that continues to some part of their bodies, whether it be low back, neck, knee, etc.

I am not so sure that it has not been done intentionally, but I will give the drafters the benefit of the doubt and say that perhaps it was, in the end, just a question of sloppy drafting or sloppy writing and that there really was no intention to limit those people who would claim for psychological damage in the way they are going to be limited with this present wording.

It is really important for this committee to keep in mind what the reality is now at the board; that is, there are some claims that have been allowed merely for the psychological damage arising from all of the events of the accident. If we are to maintain that small benefit that appears at the board now, then we certainly should be moving to outline that explicitly in this particular section, because the way this is drafted now, that is not clear. In fact, the way this is drafted, those people would not qualify any more.

I think if we are going to keep in mind and certainly reflect some of the gains that have already been won by injured workers in this regard, then we as a committee have to ensure that we put back into this section reference to damage that is going to arise out of the accident and not from the abnormality or the loss.

I think what we have done here is make a proposal that other people, it



seemed to me, were already thinking about in here yesterday. Certainly, we have tried to provide to members of the committee examples that we have had in our own ridings where people did get compensation, whether in the form of a pension, a provisional award, etc. They did get some kind of benefit from the board because of the psychological damage and there was no link whatsoever to any loss or organic problems that continued afterwards.

We have tried to do that to show that this gain has already been made. What we do not want to do in this act is take that away, diminish it or restrict it in any form. The present wording in fact does that. Again, whether it was intentional or not, I do not know. I hope it was not, but I will give the benefit of the doubt and suggest we can correct that error now by putting it back in.

I think it is a good motion. I hope the Liberal members on the committee can support it. We will try to right what is obviously, to me, some kind of error in drafting when this was originally done.

Mrs Sullivan: The government members of the committee will, I expect, be opposing this motion, not because they are not concerned about the issues that are raised, particularly by Miss Martel, but because indeed the motion is redundant. "Functional abnormality," if I can just skip, "which results from an injury" includes the kind of psychological damage that may occur at the time of an accident. The last line, "psychological damage arising from the abnormality or loss," covers the period later on.

Indeed, the policy of the board already is to see an injury as that which includes both physical and emotional damage. That is the current policy. That will continue to be the policy. The motion is therefore redundant.

Miss Martel: I guess I have to go back and ask Mrs Sullivan—I do not see how it is redundant. I read what the definition of "impairment" is here, and the use of the "and" in particular says very clearly that the psychological damage would arrive either from (a) the abnormality or (b) the loss. I do not see how "functional abnormality" takes into account psychological damage.

It seems to me that in the paragraph we are dealing with the two stand alone and in fact represent three different types of problems that would be considered impairment under this particular section. We are looking at physical or functional abnormality as one; the loss, including disfigurement, as two; and psychological damage as the third category that would be included in any definition of impairment.

I think the first problem is that to try to say the psychological damage is covered under the definition or the title "functional abnormality" is not correct in my reading of that paragraph, and second, the psychological damage is very clearly limited in this particular definition to two things: psychological damage arising from (1) abnormality or (2) loss.

I cannot see in there anywhere where we are taking into account the accident itself, which may have nothing to do with the loss or abnormality. The worker may not suffer from those two things at all but indeed only have psychological damage arising from the accident itself. He may have no other organic problems, none, visible or otherwise.

So I would ask either Mrs Sullivan or Mr Clarke, if he wants to respond as well, how they believe psychological damage is included under functional

abnormality and how, again, they believe the board will not in fact limit its allowance of compensation based on the two categories they provide here.

Mrs Sullivan: If I could, I will just speak to that by saying that functional abnormality includes any psychotraumatic disability, and indeed, if there is no functional abnormality, there is no psychotraumatic disability. We are in the first-year philosophy logic class.

Miss Martel: May I ask then, if that particular state of mind Mrs Sullivan just outlined is included under "functional abnormality," why in fact we would refer to "psychological damage" at all in this definition.

Mrs Sullivan: I attempted to explain that earlier by speaking about the time sequence. In some cases, the psychological damage may not appear until later than the physical and functional abnormalities become precise. They would be a direct consequence of the abnormality or loss, which is recognized, but the time sequence would be why it is specifically indicated as being something which arises from the abnormality or loss.

Miss Martel: But I go back to the point we were trying to make that the psychological damage may not in fact arise from the physical or functional abnormality or loss at all.

Mrs Sullivan: In which case it is included as a functional abnormality.

Miss Martel: I do not understand why it would be, because it would be in a category all of its own. We tried to get a definition of "functional abnormality" yesterday. The only definition I could possibly come up with was that it included some kind of abnormality, whether it be blood circulation, cardiovascular problems, etc.

Perhaps what we require is a definition that the board intends to use for "functional abnormality," but my look at those two words is that they are two completely separate problems that may strike an individual. I do not know if the board has provided the ministry with some of type of terminology regarding what it considers to be (a) a functional abnormality, (b) a physical abnormality and (c) psychological damage, but I certainly do not see the connection the parliamentary assistant is making.

1700

Mrs Sullivan: There has been a great deal of consideration in terms of the difficulties of the adjudication of claims relating to psychotraumatic disabilities. During the course of that, there have been practices and policies developed relating to those claims. Mr Clarke can speak more to the practice. I think I have explained why the wording is used. It is meant to be inclusive rather than exclusive.

Mr Clarke: I guess the only thing I can add in terms of trying with this, Miss Martel, is that we think the phrase "functional abnormality" deals with the first question, the question of whether it is a direct result of the accident that someone has such a psychotraumatic disability that he is, to use the examples you were using, not able to do what he was able to do before. He is now afraid of heights. That is now a functional abnormality. It is not what they were able to do before.

What we meant, I believe, with the phrase after the word "and" in the

fourth line was to ensure that as board policy has in the past, we included those situations where there was not a direct disability, a psychotraumatic disability right from the accident itself, but one that resulted from coping with the injury Mr Kormos was talking about earlier. You have had the physical loss and that in itself has then subsequently triggered psychological damage. We wanted to make sure we had covered both the direct and the indirect. We believe we were being inclusive rather than exclusive.

Mr Dietsch: May I just ask a question? As I understand you to say, your inclusion of any psychological damage arising from abnormality or loss after the word "and" is dealing exactly with the statements Miss Martel has been putting forward.

Mr Clarke: We have dealt with several things here. I do not think I can say --

Miss Martel: He tried to say it the other way. Mr Dietsch.

Mr Dietsch: I am asking the question.

Mr Clarke: Part of this relates to this very difficult issue of separating the cause from the result. Impairment essentially tries to deal with the result and so what clause (1a) says is that if there is a physical abnormality or functional abnormality or a physical or a functional loss, then that is an impairment.

The past board practice has been, and I believe will continue to be, that if, directly as a result of that accident, you have someone who has, to use a fancy word, a psychotraumatic disability--there may not have been a physical disability at all, in the physical sense that they have not had a body injury, but they have been frightened near to death or whatever and that has impacted upon their ability to do the job they were doing before. They cannot be that kind of activity.

I believe that if I were representing the claimant, I would argue that is a functional abnormality, is thus an impairment and is thus compensable. That is one issue. The second issue, which I believe we have tried to address here, is that I have not had that situation. In fact, I have had an organic injury. I have lost my hand and that has resulted in some psychological damage to me. I am having a hell of a time coping with this loss which impacts on my ability to do all kinds of things. That then also would be recognized as an impairment, so it is indirect. I believe it covers both of those in that kind of scenario.

The Chairman: Okay, Mr Dietsch?

Mr Dietsch: Yes.

The Chairman: Any other comments?

Miss Martel: Basically, what you are saying is that the definition or a psychotraumatic disability would be categorized under "functional abnormality," or would be classified under it?

Mr Clarke: If it were direct, yes. If it were indirect, it would be something that would flow from the part after the "and," I believe.

Miss Martel: Should we know about any other things that are

classified under "functional abnormality" before we go any further? What else does the board consider to be a functional abnormality? You have talked about psychotraumatic disabilities. Are there other categories in there? I think what you are trying to say is--

Mr Clarke: I do not think I could give you an exhaustive list at this point.

Miss Martel: I guess the best thing that can be said is I can appreciate what Mr Clarke is trying to say. My concern goes back to where we have been, in that we really have no idea what the board is going to do with it. Just recognizing now that we hope the board is going to see a psychotraumatic disability under the category of functional abnormality and hope that is going to stay, if and when this bill is passed, I guess is something we will have no choice but to accept.

My concern is that we have not been given any definitions. This goes back to our problem with psychological damage. I would not have considered functional abnormality to be in any way, shape or form related to being frightened to death of things, fear of heights, etc. I thought that would have included function of systems, respiratory or whatever, within an injured worker.

So a major part of the problem we are having is, on the one hand, what you are telling me the board would consider it to be and, on the other hand, our interpretation of what that particular section means. I would never have considered that it would have been covered under there or that in fact a psychotraumatic disability was one indeed that resulted purely from the circumstances of the accident itself and not from any loss or abnormality.

It does not say that anywhere here. I do not think psychotraumatic disability is probably defined under the present act either, so I can only appreciate what you are saying about board policy and go from there. My concern is that given that a psychotraumatic disability is not defined, I do not know if a worker would use functional abnormality to define it and try to fight his case there.

I certainly know I would never have done that, because I would never have assumed that is what functional abnormality meant in the first place. I have some real difficulties with the wording of this and that we were not given any definitions of psychological damage, functional abnormality, etc.

The Chairman: Any other comments on the amendment by Miss Martel? If not, is the committee ready for the vote?

Miss Martel: No. We would like 20 minutes, please.

The Chairman: We will have a 20-minute recess while members are recruited. We are in recess until 5:27.

The committee recessed at 1/07.

1727

The Chairman: The committee will come to order. When we left, we were about to vote on an amendment by Miss Martel on subsection 1(3).

The committee divided on Miss Martel's amendment, which was negatived on the following vote:



Ayes

Kormos, Martel.

Nays

Dietsch, Lipsett, Roberts, Stoner, Tatham.

Ayes 2; nays 5.

Mr Tatham: On a point of information, Mr Chairman: How are those members of the committee who are not here recorded?

The Chairman: They are not.

Mr Tatham: They are just absent.

The Chairman: They are not part of the record.

Mr Tatham: They are not mentioned at all? Just a blank, is that it?

The Chairman: Right.

We are still on subsection 1(3). Any other comments on subsection 1(3)?

Mr Kormos: I have some grave concerns about the structure of clauses 1(3)(la), 1(3)(va) and 1(3)(xb). I trust they will be dealt with in due course. I have concerns about their structure.

You have got two things here. You have a juxtaposition of "physical or functional abnormality or loss" beside "psychological damage." I am concerned that by using the word "and" in "which results from an injury and any psychological damage" that assessment of psychological damage has to be in conjunction with the assessment of impairment, to wit, physical abnormality, functional abnormality or loss. That is the way it is worded. Once again, we can have all sorts of people say, "Oh, no, no, no, that's not how it is going to happen."

That reminds me of when I had the interesting opportunity to sit in on the standing committee on administration of justice when it was considering Sunday shopping clause by clause. I remember pointing out during that about the dual prosecutions. I said: "Look what you guys are doing. You are making it possible not only for a store owner to be prosecuted but also to be prosecuted for coercing an employee into working, but you are still leaving it open for the employee to be charged, even when the employee is being coerced."

I tried to explain to the committee that my limited understanding of duress as a defence would not extend to that type of coercion, and I was assured that no way would that ever happen, except, lo and behold, the press reported some short time ago about staff being prosecuted notwithstanding that it appeared that they were compelled to work, because that is the way the legislation ended up. The fact is that that is the law, and I am concerned about that here. I am confident that people are going to try to reassure me.

The Chairman: Which section are you on now?

Mr Kormos: I am on clause 1(1)(la)—the word "and" in the fourth line—"which results from an injury and any psychological damage." It is because of that I propose the following motion.

The Chairman: Mr Kormos moves that clause 1(1)(1a) of the act, as set out in subsection 1(3) of the bill, be amended by striking out "and" after "injury" in the fourth line and inserting in lieu thereof ";or."

Why the semicolon?

Mr Kormos: If you can all pause for just a --

Mrs Stoner: We are just hanging on every word.

Mr Kormos: I am pleased to hear that. I will be able to report back to my constituents that the committee has hung on to every word that I have said at this committee.

The Chairman: More important, do you wish to speak to your proposed amendment?

Mr Kormos: Yes. I am wondering if it might not be preferable--well, I will go ahead, because I realize it is difficult. I know it is the sort of thing that it is easier to have in front of you.

All we are talking about here is four lines down, where after the word "injury," there is the word "and." The reason for deleting the word "and" and inserting ";or" is this. Right now, there is one definition of "impairment." Impairment here is, let's say, bifurcated into (1) "physical or functional abnormality or loss including disfigurement" and (2) "any psychological damage arising from the abnormality or loss."

What I am fearful of is that if the clause is permitted to stand as is--you see, it is hard enough for physical injury alone to necessarily be immediately assessed accurately--sometimes, and not just rarely, to be identified at all--other than after a passage of time.

1730

That problem is compounded, in my view, especially now that the committee has chosen--I have to tell you that the committee's rejection of the last motion is what compels me. Had it not been for the rejection of the last motion, I would not feel compelled to make this motion now, because, do not forget, that last motion would have expanded the definition. That compels me to say, "Look, what we have to do is say that impairment can mean one of several things". That is what this paragraph, in my view, is trying to say. Among other things it is trying to say impairment means any psychological damage arising from the abnormality or loss.

Let me try to give an example. I want to try to put this into--

The Chairman: Before you go any further, can I ask you a question on your amendment? I think Mrs Sullivan has a question as well.

I do not understand the semicolon. I think you were concerned that impairment would have to be both an injury and psychological damage and you are saying it should be either one.

Mr Kormos: Yes, sir.

The Chairman: Now if that is the case, if I understand your amendment correctly, I do not understand why you would have a semicolon, which

almost sets it up as a separate sentence. I am not an English major, but that is what I am confused about. Why would you not substitute "or" instead of "and" and let it run on as one sentence?

Mr Kormos: First of all, it would be a run-on sentence if that semicolon were not there. Look at all the ors we have got in there already. We have two ors prior to that: "physical or functional abnormality or loss." Remember we discussed that yesterday and argued that, deciding whether physical and functional both apply to abnormalities. That is the problem when you do not use a semicolon. The semicolon was primarily, from my point of view, grammatically correct. Also, it made it quite clear that nothing before that "or" qualifies anything after that "or."

Otherwise, some interpreters of this clause might try to qualify the psychological damage with the words that precede the "or" just like we qualify the word "abnormality" with both "physical" and "functional."

The Chairman: Okay. I understand what you are saying but I still want to seek the advice of people who are more learned in the language than I, as to whether that is an incorrect grammatical structure if you try and start out with a semicolon and assume that "or psychological damage arising from the abnormality or loss" stands alone with the semicolon in front of it. I seek guidance from other members of the committee on that. I really wonder about that.

Mr Kormos: In view of that, I might be prepared to--

The Chairman: I am not ruling on it. I am just--

Mr Kormos: No, I appreciate that. You are being helpful. I might be prepared to change that to a comma.

The Chairman: Mrs Sullivan, are you going to add something on this?

— Mrs Sullivan: I wonder if perhaps the legislative counsel could comment.

Mr Dietsch: On the semicolon, the colon and the "or."

Mr Kormos: I did not consider a colon.

• Mr Dietsch: We are thinking about a question mark.

The Chairman: Would you stop giving Mr Kormos ammunition. Ms. Hopkins?

Mr Kormos: Praise the Lord and pass the ammunition.

Ms Hopkins: Gee, I wish I could say something that would be both clear and helpful here.

The Chairman: Either one would be fine.

Ms Hopkins: May I have a moment to speak with Mr Kormos before I help the committee?

The Chairman: Yes. Anyone else wish to speak while this conference is occurring?

Miss Martel: What we are trying to do here --and we are not sure by what means it is going to be achieved yet: colon, semicolon, or "or"--is to ensure that the definition is clear that the top part of this section or all of the functional abnormalities, all that, is indeed quite separate from the whole question of psychological damage.

1740

It was our concern in reading through it that in fact in order to meet the qualifications of the definition of "impairment," an injured worker would be put in the position that he or she would have to meet both qualifications; that is, he would have to have some kind of physical or functional abnormality or a physical or functional loss, and second, he would have to have psychological damage coming from that abnormality or loss; that the use of "and" in this particular case would make a requirement of both of those particular items having to be in place before the definition of "impairment" could be reached.

We do not think that is what the drafters intended, and if they did, we do not think it is fair. It is our view that both of those qualifications should not have to be met in order to meet the parameters of "impairment," so with the help of legal counsel we would like to find some way whereby it can be clear, not only to us but to anyone at the board who has to deal with this, that in fact we want the first part separated from the second and we want the board, when considering this particular item, to be very clear that it is dealing with two different issues and in fact a worker is not going to be expected to meet both criteria in order to qualify under this particular definition.

That is what we are trying to do. I do not know if we are having any luck.

The Chairman: Can I ask either Mr Kormos or Ms Hopkins whether they are prepared to venture into this rough terrain?

Ms Hopkins: I have discussed with Mr Kormos another approach to writing the definition that may make the situation clearer, if I could have a moment to write it down.

Mr Kormos: Counsel, who is incredible, was most helpful.

The Chairman: We have noticed before how lawyers stick together.

Mr Kormos: In the event that the committee does not see this as acceptable, we have another one.

The Chairman: You have a fallback position.

Mrs Sullivan: Are you ready to proceed with the vote on this one?

The Chairman: What is the status of the amendment before us now, Mr Kormos?

Mr Kormos: The motion is on the floor. Miss Martel was speaking to it.

The Chairman: We either must speak to it or vote on it.



Mr Kormos: I want to speak to it a little further.

I am a little concerned that some members here think these are frivolous motions.

Mr Tatham: I think he should name names.

The Chairman: I do not think he should.

Mr Kormos: I find that upsetting. A lot of work has been put into this, as I understand it, by all members of this committee. It is a long, slow process.

Mrs Sullivan: On a point of order, Mr Chairman: Could the member speak to the motion?

Mr Kormos: Most important is the contribution of legal counsel.

The Chairman: On this particular amendment.

Mr Kormos: She has worked hard on each and every amendment, including this one, to make sure it accurately reflects the intention of the mover.

To get back to the actual amendment, I will but reiterate that it is imperative that there be some distinction between the first half of this definition and the second half of this definition. Otherwise, it tries to do something which it is not successful at and that is a disservice, a discourtesy, to those people who are going to have to rely on this definition.

As I understand it, definitions are probably the single most important part of any bit of legislation because they are the hardest, fastest part of any bit of legislation; the point to which reference must always be made. A committee has to be oh-so-careful in looking at the language we choose, in looking at the structuring of the language, in looking at how things are thrown together. Unfortunately, this sort of thing cannot be just thrown together haphazardly but has to be resolved with careful consideration. It is careful consideration that gives rise to this motion, and I would urge the members of this committee to support it.

Miss Martel: The purpose behind this is to really cut out as much as we can any opportunity for the board to use its discretionary powers to limit under this act. It seems to me that if we sit and allow the word "and" to remain in the particular definition as it appears now, what we are doing is really setting ourselves up and setting up the board to be in the position to use that discretion.

We heard many times during the course of the hearings that the last thing anyone wanted, and I would think that would include members of this committee as well, was to give the board any more power than it already has, because the perception was certainly out there by the employers, by the unions and the legal clinics, etc, of "Give them an inch and they will take a foot and keep going from there." So the best thing to be done, in the opinion of the majority of groups, I think, that came before us, was to limit as far as possible the discretion of the board by being very clear in our wording as to what we as legislators actually wanted in the act and how we wanted the board to operate.

The problem we have is that "and" just leaves a big, wide-open hole for the board to drive right through and say: "All right. Using that particular word it is our belief that what this section now means is that in order to meet the definition of 'impaired' a worker has to meet both qualifications. He has to have any of these abnormalities, whatever the heck they are now, psychological disabilities, trauma or anything else, plus disfigurement and, second, some kind of psychological damage arising from that loss or arising from that abnormality." I think the last thing we want to do is give the board that kind of leeway, quite frankly, because it is my opinion that all it will do is use it to limit as much as it possibly can, whether it be in terms of benefits, etc.

What we are trying to do is ensure that it is very clear that it can be one or the other, and maybe people would have both, but certainly that you would not have to meet both qualifications in order to come under this particular definition.

I see that legislative counsel has come up with a new way to go about that, and I am wondering, Mr Chairman, if you would like me to deal with that particular issue now.

The Chairman: What we must do is deal with the amendment that has been moved by Mr Kormos.

Miss Martel: The semicolon and "or."

The Chairman: That is correct. You cannot change Mr Kormos's amendment, because he is the one who moved it. He is not here to withdraw it or accept a friendly amendment to it. We must deal with the amendment as it is before us.

Miss Martel: Then we can go ahead and deal with that and we will save this one until Monday.

The Chairman: Yes, if you wish to make an amendment with a point, then that is a separate question.

Mr Dietsch: Are you finished?

Miss Martel: Yes.

1750

Mr Dietsch: I guess what I have to say, in recognition of the amendment and the absence of the member, is that it troubles me to some degree to find that we are making a charade out of the committee work and the interest of the members, who are spending a great deal of time listening to the arguments that are put forward and very attentively taking in all the points that are continually made in recognition of the seriousness of what we are trying to do. I find it a bit awkward that legislative counsel, who was going to address an opinion and make a suggestion, unfortunately cannot discuss it with the member now because the member, for whatever reason, and I am sure it is legitimate, has had to leave the room.

The Chairman: I am uneasy since we are not debating a point of order or a point of privilege or the amendment before us.

Mr Dietsch: I think I am debating in terms of the view that the

amendment, as it is before us, in dealing with the semicolon and the "or" in place of the "and"—I guess I am trying to develop in my mind the absolute seriousness of the motion in terms that we can deal with these in a very forthright manner.

I realize that the members have been given marching orders by their leader to be as obstructionary as possible, and recognizing that the amendment that has—

Miss Martel: We were not given marching orders.

The Chairman: Do stick to the amendment.

Mr Dietsch: —been put before us is a very serious amendment, I, for one, not having come out of the legal profession, did not realize that it was possible to speak for a considerable period of time on one word, but I am making my efforts as well, I suppose. As to what the amendment does, I am not sure that the suggestion of the member in terms of dealing with the amendment as it is before us now does exactly, or prevents from doing, the point that has been put forward by the opposition members, other than the fact of living up to the marching orders from the leader.

The Chairman: Okay. I think to be fair—

Mr Dietsch: For that reason, I am most interested in hearing now from the legal counsel who was suggesting that some changes be made.

The Chairman: Okay, but really, it is not frivolous. I would not accept a frivolous motion. The word "or" does change the—

Mr Dietsch: I am not suggesting it is frivolous, nor would I ever suggest that members of the opposition would do anything frivolous.

Miss Martel: On a point of order, Mr Chairman: I just asked you if you wanted me to deal with this. You have said to me that, no, we have to deal with the motion that is on the floor.

The Chairman: That is right. We cannot change the amendments before us.

Miss Martel: Exactly. Now that I am willing to deal with it, you have said to me we have to deal with Mr Kormos's particular item which is on the floor. It would seem to me that if that is what we are going to do, then legal counsel can instruct us on Monday as to the changes which are going to be required, since it seems obvious to me that this is going to be—

The Chairman: Okay, but to be fair, I did ask legal counsel earlier about the whole question of the structural aspect of the sentence with the semicolon.

Miss Martel: I have no problem with that.

The Chairman: We are not talking about changing the amendment before us. Ms Hopkins, can you help us that way?

Ms Hopkins: By inserting the semicolon after the word "injury" and replacing the word "and" with "or" after the semicolon, what we do is create two conceptual units within the definition. The first conceptual unit is the

reference to "any physical or functional abnormality or loss including disfigurement which results from an injury." That is one category of impairment. A second category of impairment, and it is an alternative category, would be "any psychological damage arising from the abnormality or loss."

The Chairman: That does not really deal with my question about whether or not the sentence makes any sense the way it is written. Anyway, we will not debate that.

Mr Dietsch: Can I get an opinion from legal counsel in reference to the amendment and the semicolon and the "or"? Can I have a definition from legal counsel of what it means to just remove the semicolon from the amendment?

Ms Hopkins: If we remove the semicolon, it is more likely that "impairment" will be read as only one category of things, everything following the word "including" in the middle of the definition. It is hard to describe. The reference to "disfigurement" and the reference to "psychological damage" after the word "including" are simply two examples of the description of impairment that came before the word "including."

Miss Roberts: And it is not limited to that; it may be several others.

Ms Hopkins: Right.

Miss Roberts: I think that is another argument, strictly a legal argument.

The Chairman: Do you wish to vote on this or do you wish to have a 20-minute hiatus?

Miss Martel: I am trying to decide if I should make any further comments. I am quite tempted to do so, to continue on here today.

The Chairman: It is five minutes to the hour.

Miss Martel: If I can just make one comment, I certainly invite all the members of this committee to participate. I find it strange that the comments that were made have been made, since I do not recall Mr Dietsch participating very actively in the last number of days. If he considers it important, I am sure he would like to get his opinion on the record as to why he is voting in favour of some of the motions he is, so I suggest to him that if he looks back he will see he has rarely done that and perhaps would want to do that.

If I can just ask legal counsel, it seems that when when you went out and talked to my colleague you did explain to him why the colon was not working and why it was necessary to redraft and put forward a new proposal. When you talked to my colleague outside, I assumed you were discussing with him what the problem was with the colon and the "or" and how in fact we could reword this to have a definition that suited the intentions we were trying to put forward here.

Ms Hopkins: I cannot comment in committee on the discussion I had with your colleague outside the committee room. I can suggest to you that as a matter of ordinary drafting practice we would use a physical presentation of the definition that would make clear the two categories, probably preceding



each of the two categories with a number: number one meaning physical or functional abnormality and the rest of that and number two meaning any psychological damage arising from an abnormality. That would be the more conventional drafting presentation and it does not rely on the semicolon to convey the sense of them.

Miss Martel: And he was made aware of that? So really there is no problem in terms of his knowing what we are going to do next. Thank you.

The Chairman: Is the committee ready for the vote on the amendment?

Miss Martel: No, I would like 20 minutes.

The Chairman: That means that we will vote as the first order of business on Monday. Unfortunately, I will not be able to take part in that exercise.

Mr Tatham: I am in the same category as you.

The Chairman: The committee will survive our absence, I am sure. We are adjourned until Monday afternoon at 3:30.

The committee adjourned at 1759.

CA20N  
XC 13  
-578

R-11

STANDING COMMITTEE ON RESOURCES DEVELOPMENT  
WORKERS' COMPENSATION AMENDMENT ACT, 1989  
MONDAY 26 JUNE 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Philip, Ed (Etobicoke-Rexdale NDP) for Mr Laughren

Ruprecht, Tony (Parkdale L) for Mr Tatham

Sullivan, Barbara (Halton Centre L) for Mr Lipsett

Clerk: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

Witness:

From the Ministry of Labour:

Clarke, Richard, Manager, Policy Branch, Labour Policy and Programs

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 26 June 1989

The committee met at 1533 in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Section 1:

The Vice-Chairman: I see a quorum. I am informed that we have a motion to vote on—it was moved by Mr Kormos—to subsection 1(3) of Bill 162; that clause 1(1)(1a) of the act, as set out in subsection 1(3) of the bill, be amended by striking out the word "and" after the word "injury" in the fourth line and inserting in lieu thereof "; or".

Are you ready for the vote?

Miss Martel: Recorded vote, please.

The Vice-Chairman: Okay.

The committee divided on Mr Kormos's amendment, which was negatived on the following vote:

Ayes

Martel, Philip.

Nays

Brown, Dietsch, McGuigan, Stoner, Sullivan.

Ayes 2; nays 5.

The Vice-Chairman: Are you prepared now to vote on subsection 3 of the bill?

Miss Martel: No. At this point in time, first I should say that my colleague Mr Kormos, who was so entertaining in here last week, is actually in the standing committee on administration of justice doing other duties in there. However, after having discussed this with legislative counsel last week, he would like me to move an amendment on his behalf. I will do so now.

The Vice-Chairman: Well, you can move the amendment yourself.

Miss Martel: It is an amendment to subsection 1(3).

I move that clause 1(1)(1a) of the act, as set out in subsection 1(3) of the bill, be struck out and the following substituted therefor:

"(1a) 'impairment,' in relation to an injured worker, means:



"1. any physical or functional abnormality or loss including disfigurement which results from an injury, or

"2. any psychological damage arising from the abnormality or loss."

The Vice-Chairman: Do you have that in writing?

Miss Martel: Yes.

The Vice-Chairman: Thank you. The import of your amendment is the same, as I read it, as Mr Kormos's previous amendment which has just been defeated. It appears that the only difference in the drafting is that the semicolon becomes a comma. It is the same intent, and for that reason I will rule this motion out of order.

Miss Martel: If I may speak to that, Mr Chairman, last week on Thursday --

The Vice-Chairman: No, you cannot debate the ruling. You can challenge the ruling, if you wish.

Miss Martel: Then I will have to do that in order to speak to it.

The Vice-Chairman: Okay. Could you state briefly your reason for the challenge?

Miss Martel: Members of the committee will remember that last week when this particular motion was being moved, at the same time as I was speaking to the reason we wanted the two sections to be separated Mr Kormos was dealing with legislative counsel in drafting the amendment I have just put forward. When he came back into the committee and spoke to the reason we wanted a difference to be made between the two sections, he then spoke to that motion, in which case I continued to speak to it.

I asked the chair at that time if, when legislative counsel was finished with the draft, the chair would like me to deal with the draft as legislative counsel had prepared it, because it more easily outlined what we wanted to do. There was some confusion as to what the "; or" meant and whether there was a better way to redraft the entire section to reflect what we wanted to move.

The chairman on Thursday ruled that I could not deal with that particular section until in fact Mr Kormos's motion had been decided upon. I had been quite willing to move at that time the changes to reflect what we had wanted to say as drafted by legislative counsel, but the chair would not let me do that at that time and said to me that we would have first to vote on the motion by Mr Kormos and then deal with whatever was left over.

I was not in a position to deal with the motion we had drafted at that particular time, and it was suggested to me that I do that today. That is why, having dealt with Mr Kormos's motion, I immediately moved to the drafting that had been prepared for both of us in the same section to reflect what we wanted it to reflect.

The Vice-Chairman: Does any other member wish to speak to the challenge? Having listened to the comments of my friend the member for Sudbury East, my ruling remains that the intent of the two amendments is the same, so I will have to put the question on the challenge to the chair.

Shall the chair's ruling be upheld?

All those in favour?

Opposed?

The chair is sustained.

Shall we now move to dealing with subsection 1(3) of Bill 162?

1540

Miss Martel: I have a question for the parliamentary assistant or Mr Clarke. It concerns where the whole idea of occupational disease would appear in this particular definition. We had some discussion last week about the actual definition of "functional abnormality," and at that time I asked what else was included under the umbrella of functional abnormality. You indicated at that time psychotraumatic incidents, but no other that I recall comes to mind.

It seems to me that occupational disease should fall into this particular category, if we are dealing with the question of impairment or a broad definition of impairment as it relates to injured workers, and I am wondering why it does not appear in this section.

Mrs Sullivan: Occupational diseases would be included in the definition of physical or functional abnormality which are the result of injury and not the cause of injury.

Miss Martel: If I may continue, I do not see how it would fall under either of those categories. We consider physical abnormality to be the loss of a limb, a break, a sprain, a strain, etc. We dealt with functional abnormality last week, and at that time it was supposed to include psychotraumatic matters. We had a great discussion about whether "psychotraumatic" should appear under "psychological damage" or not, and I was told at that time that it meant any kind of functional problem which would not allow an injured worker to continue at his employ.

Many people would appreciate that a worker may incur an occupational disease which may or may not allow him to continue at his former employment. I would like some further clarification, because I do not see how it relates to either of those two definitions that appear, and in my opinion it certainly does not come under psychological damage.

Mr Clarke: If I might respond, I restate what I stated a few days ago. The operative clause is really section 3 of the act, which is the door into compensation, which says that if the worker has experienced an injury as a result of work, that is what is the trigger in terms of compensation.

The definition of "impairment" in subsection 1(3) of the bill, to add clause 1(1)(1a) to the act, refers to the result: Is there a physical or functional abnormality? That end result can come about from either a physical injury, traumatic injury or from industrial disease. That is the way the act operates now and that is the way it would continue to operate with this definition.

This section is not designed to lay out the causes of workplace injury. Impairment refers to the result therefrom, and it can result from either a traumatic injury or from industrial disease.

Mrs Sullivan: Perhaps the member would also refer to section 122 of the act, which further clarifies the discussion put forward by Mr Clarke.

Miss Martel: It seems to me the definition is either included here or it is included under section 122.

Mr Clarke has said that it does appear here, as the result of a particular workplace injury that could result in an occupational disease. Mrs Sullivan has said it is actually appearing under section 122. I am wondering which section you want to deal with occupational disease under. Is it supposed to appear in both, and if it appears under both sections of the act, is that not going to cause any future problems in terms of either definition or determining under which section compensation to a worker is going to be made?

Mrs Sullivan: What section 122 does is clarify that industrial diseases can be seen as a result of an accident, as the entitlement to compensation in section 3 relates to the personal injury coming out of an accident. What we are talking about in the definitions of "impairment" in clause 1(1)(1a) would relate to the result rather than the cause.

Miss Martel: But an occupational disease would not necessarily result from any injury in the workplace, and a worker would not have to suffer any break, strain, etc, in order to develop an occupational disease.

Mrs Sullivan: That is where section 122 makes the connection. The worker is entitled to compensation as if the disease were a personal injury by accident. That is what section 122 of the existing act does.

The Vice-Chairman: For the clarification of the chair: It seems to me that the discussion so far has dealt with section 1 as being the result, and you are referring to section 122, which talks about a disability or death resulting "from an industrial disease," so it sees industrial disease as a cause.

Mrs Sullivan: That is correct. That is what I have been trying to say.

The Vice-Chairman: You are also arguing, though, that industrial disease can be the result, that is, a "physical or functional abnormality."

Mr Clarke: No. If I might try. This act, as everybody knows, is so complicated, and when we move a set of equally complex and complicated amendments to it, it gets really quite difficult.

What we are trying to do in the definition sections—and we already did it in clause 1(1)(g) when we tried to define "disability" and now in clause 1(1)(1a) where we are trying to define "impairment"—is to take into account the fact that we are shifting from a single award system for a permanent partial disability to a dual award system. In clause 1(1)(g) we have defined the term "disability" to refer to the earnings loss aspect of it, which triggers part of the dual award.

Here in clause 1(1)(1a) we are trying to refer to the "impairment" to the individual, if I can use the word for a moment; physical impairment, but we have defined it more broadly than that, as we discussed last week.

Both of those are triggers for compensation, with respect to the dual award. Whether a person is entitled to compensation of any sort in the act

depends upon whether the worker has an injury that arises out of the work or the workplace.

That is set out in section 3 of the act, but in addition to that, as specific recognition was given to "industrial disease," section 122 of the act, which Mrs Sullivan referred to, makes it clear that industrial disease is an injury as countenanced under section 3, which is the trigger into compensation; and if that results in a physical or functional abnormality, which industrial disease can and frequently does, that can be considered an impairment, which will trigger, among other things, compensation for a noneconomic loss under the proposed dual award system.

In a sense, you have to look at it in its entirety. What we are trying to do here, though, is just define impairment, which is the compensable thing. But there has to have been a workplace injury which, as I said a moment ago, can be a traumatic injury or industrial disease, as set out in section 122.

The Vice-Chairman: Does that resolve it for you, Miss Martel?

Miss Martel: My only concern is that you and I can appreciate that it would relate back to section 122, but if it is not included in this particular section, can the board be in a position to narrow it and deal strictly with the definition of "impairment" as it appears here, and not have to take into account what it says under section 122?

Mr Clarke: I do not think so, Miss Martel. I am trying to make sure that we do not confuse in the act the cause and the result, and I think we should be careful not to do that. Clearly, "functional abnormality" has been considered to be the result of an industrial disease. You could be sensitized.

Miss Martel: Sensitized to isocyanates.

Mr Clarke: Or some other thing; that is right. And that is a functional abnormality, one can argue, and certainly should be able to argue, for permanent impairment where there is such. Certainly, it has been on a temporary basis in a number of instances. That is what is supposed to happen but does not always happen. You have to find whether it is causally related, right? Anyway, given all of that, that is what it is there to do.

The Vice-Chairman: Can we now vote on it?

Miss Martel: No, I am still going through subsection 3. I can flip over to the definition of "student," if you do not mind.

1550

Mr Clarke: Clause 1(1)(xb)?

Miss Martel: Yes. The question I want to deal with this time is on the use of "full-time student." I can appreciate that the intent of the particular section is to ensure that a student, if he is working for an employer during the course of the summer, is not going to be getting a wage that is comparable to a learner or an apprentice who may be going on to work full-time for that employer and is not treated just as summer employment. I am wondering at the use of "full-time." Why have we limited it only to full-time and what do we do in the case of part-time students, first off, and in the



case of students who would be properly going to school full-time but are engaged in a co-op program?

Mr. Clarke: What, of course, we were trying to do was to add to the particular clauses that specifically enabled the board to go beyond the current wage that has been earned at the time someone is engaged in work in which he was learning. That is how it came into the act originally, as either someone who is working at a learner's rate and who would move on to a full-time rate of somebody who was working as an apprentice.

The question then came up that there are situations, as we all know and have all experienced, where people are going to school full-time and working either for the summer or perhaps in the evenings to earn their way. They get injured and may very well be working at a minimum wage job and that is not likely going to be where they finish up. We put the provision in to encompass full-time students.

To answer the latter half of Miss Martel's question, I would think that a student who was engaged in a co-operative program through the University of Waterloo or wherever would be considered a full-time student, even while he is off in that semester when he is gaining his work experience.

With respect to a part-time student, the difficulty is always the same, and that is the difficulty everyone has in defining what a part-time student is. If I take a class at night, am I a part-time student while I am working full-time, for example, or are two classes part-time, or am I working part-time if I am only working four hours a day and going to classes four times a day? Where do you make the break point?

As this is written, they are not specifically included. I would want to check with the board, quite frankly, to determine how it would handle that situation, because I do not know specifically. Okay?

Miss Martel: Okay.

The Vice-Chairman: Would that apply as well to a student working in the summertime; that is, someone who is going to school full-time but is working full-time in the summer?

Mrs. Sullivan: Yes.

Mr. Clarke: Yes. This is meant to cover that student. What Miss Martel is raising is someone who is—

The Vice-Chairman: Yes. In a co-op program and—

Mr. Clarke: Not a co-op program. Something—

Mrs. Sullivan: Part-time.

The Vice-Chairman: Or a part-time student, yes.

Mrs. Sullivan: Yes.

The Vice-Chairman: Taking two courses rather than a full load. Mr. Clarke is consulting with someone from the board in order to get an answer to

the question. I do not know how we can—I would suggest that, while Mr Clarke consults, we recess for three minutes.

The committee recessed at 1555.

1559

Mr Clarke: This is a particularly interesting question Miss Martel has raised. As I sort of walked over it briefly, the whole question about a part-time student is open to a variety of definitions and you will find that different academic institutions define it differently. Some will say that you have to have taken two thirds of the basic course load of a full-time student before they will consider you even a part-time student. Others will have different rules and I suspect that in common language we have our own different senses of what a part-time student is.

Because it is not perfectly clear to me currently how these situations are raised under the current act, I would like an opportunity to check that and perhaps come back to the committee on that.

The Vice-Chairman: Is the committee prepared to stand down this section until we get the answer?

Mr Dietsch: I think that is probably the most appropriate way in which to deal with this item. The point has been raised and it is a valid one. To make sure that it is given due consideration, I think it would be advisable that we stand down this particular area and move on to the next section.

Mrs Sullivan: If I could, I suggest we stand down subsection 4 as well, which would also add the word "student" to the definition of "learner" in the act, and then proceed to section 2.

The Vice-Chairman: Is it agreed then that the committee stand down subsections 1(3) and 1(4) until we get the answer and clarification on the meaning of the word "student"?

Miss Martel: May I speak to that? What do we do in the case of having other questions within that same section? Do you want to leave the whole section?

The Vice-Chairman: If we would be standing it down, we would be leaving the whole thing. We would come back to it and you could raise other questions about the section at that time.

Miss Martel: Okay, because I have other questions within that section.

Mr Dietsch: On that point, unless we deal with the other two sections and then just stand down the portion of clause (xb), the definition of "student"—

The Vice-Chairman: It was suggested by Mrs Sullivan that we stand down subsection 1(4) as well.

Mrs Sullivan: Yes, clause (xb) and subsection 4. If Miss Martel is interested in pursuing other questions relating to subsection 1(3)—

The Vice-Chairman: It is up to the committee. Either we can deal with those questions now or we can stand the sections down and then come back to them and deal with other questions on them at that time, whatever the committee prefers.

Miss Martel: It makes no difference to me, as long as it is recognized that there are other questions, not only the question of part-time student, that I want to deal with.

The Vice-Chairman: There is nothing to prohibit your raising other questions later. Is it agreed that we stand down the two?

Mr Dietsch: Let's deal with the other portions. The reason I was recommending to stand down that section was that I had anticipated we were finished with clauses (1a) and (va) and were ready to vote, with the exception of clause (xb) on "student," but Miss Martel has indicated she has more questions in relation to that. Let's deal with those questions.

The Vice-Chairman: When we come to the vote, we will be voting on subsection 3; that is, the whole thing, not on the individual definitions within it.

Mr Dietsch: I understand then. I want to clarify my position in that if Miss Martel has other questions related to subsection 3, then let's put them forward and leave the questions relative to "student" aside. I thought she was finished with her other questions.

The Vice-Chairman: That is fine with me. If it is acceptable to the committee, we can deal with the other questions now.

Miss Martel: I want to raise the question of what "formal education" is. I take it what we are trying to do is determine what "student" is, based on that definition of "formal education." I want to know if it includes a couple of things; first, a certificate course that would not result in a degree at either the college or university level, BSc, BA, etc; second, does it include such things as secretarial school, which would be away from either a college setting or a university setting, and the question of other trades such as, if I can use the example, a hairdressing school? Are we considering all of those as formal education?

The Vice-Chairman: Can you deal with that now, Mr Clarke, or would you prefer to deal with it later when you are able to respond on the question of "student"?

Mr Clarke: Why do I not deal with it when we deal with the rest of it.

The Vice-Chairman: Okay. Do you have any other things you would like to raise?

Miss Martel: Yes. In the same vein, for example, at Cambrian College of Applied Arts and Technology, you have people learning specific trades who during the course of their formal education will also be doing work within that particular trade; on-the-job training.

Mr Clarke: I guess it will depend on the trade again. In those trades that are apprenticed trades, if he is an apprentice, whether he is in

the classroom part or the on-the-job part, he would be considered an apprentice and is already covered by the act.

Miss Martel: So the wages he would receive would be those of an apprentice who would be doing that within that trade, or someone who would be working full-time in that trade already. If they were hurt on the job, they would just—

Mr Clarke: Yes, the board has the discretion to—

Miss Martel: Categorize an apprentice?

Mr Clarke: Yes.

Miss Martel: Is that defined?

Mrs Sullivan: Under clause 1(1)(z). It is defined under the word "worker": "includes a person who has entered into or is employed under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise, and includes...."

Miss Martel: So even if the apprenticeship is part of the formal education, with just a couple of weeks off to move into that particular area of employment, he would still be considered an apprentice, even though he was not on there full-time as an apprentice?

Mrs Sullivan: That is correct.

There is another definition that might also be useful. That is the definition of "learner," which is defined in clause 1(1)(q): "a person who, although not under a contract of service or apprenticeship, becomes subject to the hazards of an industry...for the purpose of undergoing training or probationary work specified or stipulated by the employer as a preliminary to employment."

Miss Martel: Okay, because the people I am trying to cover are those who would get hurt in that particular employ, but would normally be attending post-secondary school, to ensure they would be covered.

The Vice-Chairman: That appears to be covered under clauses 1(1)(q) and (z), which refer back to "learner."

Miss Martel: I have one question in terms of clause (va), the definition of a "permanent impairment." It says a "permanent impairment" is that which "continues to exist after maximum medical rehabilitation of the worker has been achieved." It relates to a concern I have with how the dual award system kicks into effect.

Under section 45 now, a worker would be seen to be ready for his noneconomic loss and future loss of earning within a certain amount of time, 12 months after he has been on total temporary disability, as soon as the board decides he has a permanent disability. The third clause says some 18 months after such time as he has been on total temporary benefits.

The concern I have is that there were a number of groups that came before us and said, "You may have a worker suffering from a serious injury who would not have reached maximum medical rehabilitation after 18 months."



Now, I am assuming that as we have described disability, the purpose of "disability," "impairment" etc was to keep into account or keep in mind that we were implementing a dual award system. That meant very specific things in terms of benefits to be awarded. What do we do with this definition in relation to that particular section of the act when workers may not have not reached their maximum medical rehabilitation state after 18 months, but the board wants to rate them anyway and states that they have a permanent impairment when in fact they may not have reached that stage.

1610

Mr Clarke: This act and these amendments are complex. Under the dual award system, in terms of determining the earnings loss, and Miss Martel is quite correct, what section 45a refers to is either---in the normal course of events, if the worker has been off on a temporary compensation payment for 12 months, extended in some circumstances to 18 months, that is the point at which the board is to make the initial earnings-loss award.

The award for noneconomic loss, the award that is tied to the permanent impairment to the worker, himself or herself, does not have a time line on it. Subsection 45(6), which is on page 5 of the bill, says, "After maximum medical rehabilitation of an injured worker has been achieved, the board shall appoint a medical practitioner who shall conduct a medical assessment of the worker." This is the way the bill is currently written.

So the intent was that, in terms of setting a noneconomic loss, clearly you have to wait until that person has reached that point of maximum medical recovery, which could be six months, 24 months or 36 months after the injury. The net result of all that is that an injured worker could very well be on an earnings-loss award a year or two, if not longer, before actually being entitled to the non-economic-loss award, because it takes that long to reach full maximum medical recovery.

In other words, they have been able to go back to work in some kind of capacity perhaps. They may not have been, they may still be off work entirely and receiving a full earnings-loss award or they may have been able to get back through reduced circumstances and through occupational therapy, and through being back at work, they are still recovering.

To repeat myself and try to make it clear, there is no time limit on when you are going to set the noneconomic loss. You wait until the worker has actually reached maximum medical recovery before you set about setting that award. That takes into account the fact that it may take longer than 12 months or longer than 18 months for the worker to be in that position.

Miss Martel: Can I backtrack?

Mr Clarke: Sure.

Miss Martel: I am reading subsection 45a(6) on page 10. My assumption has always been that the two were going to occur at the same time. I need you to point out to me, then, where it states clearly in the act that noneconomic loss is not dependent upon future loss of earnings, that one can happen without the other.

Mr Clarke: It is section 45, page 5 of Bill 162. Subsection 45(1) says, "A worker who suffers permanent impairment as a result of an injury is entitled to receive an amount for noneconomic loss." That is the section that says it. If you go through section 45---

Miss Martel: Hang on.

Mr Clarke: I am sorry.

Miss Martel: I do not have it unless it is in this section.

Mr Clarke: As it is now?

Miss Martel: Page 5?

Mr Clarke: Yes.

The Vice-Chairman: In the reprinted version of the bill it is on page 6. Section 45 is on page 6. It might be useful if we were all working from the same thing. We can work from the reprinted bill.

Mr Clarke: In that first subsection they basically say the same thing. If you read all the way through section 45, whether in Bill 162 as it was originally printed or in the reprinted version with the government amendments in it, you will see no reference to a time line. There is no reference to 12 months or 18 months as there is with respect to the earnings-loss award in section 45a.

So clearly, in all the information that we have provided from the ministry from the outset, we have said that that determination of a noneconomic loss will happen wherever the worker reaches maximum medical recovery. There is no linkage between that and economic loss. It could very well be that a worker has an earnings-loss award for two years, for example, is back at work at that point, does not have any more earnings loss and, six months later, it is determined that he is fully recovered and there is no permanent impairment either; or it could be determined that there is some permanent impairment at that point and he will get a noneconomic loss. So the two are separate in terms of when they are determined.

Miss Martel: Can I ask you if the non-economic-loss award is going to be taken into account when future loss of earnings is determined?

Mr Clarke: No.

Miss Martel: So nothing is taken into account but his net earnings, if he has any at the time of the injury, at the time that he is rated for future loss of earnings?

Mr Clarke: That is right.

The Vice-Chairman: Any other questions, Miss Martel?

Miss Martel: Not on that subject.

The Vice-Chairman: All right. It is my understanding that the committee is prepared to stand down subsection 1(3) until Mr Clarke is able to get clarification on the question of student, and also 1(4), since it also refers to student.

Therefore, we would have to go to section 2. Unfortunately, section 2 refers to the definition of "impairment," which we have not yet dealt with and we are standing down. Therefore, we should go to section 3 of the bill.

Section 3:

The Vice-Chairman: Are there are any comments or questions on section 3?

Mrs Sullivan: If I could, I have an alternative government motion to put before the committee as section 3 and I would like to distribute that at this point.

The Vice-Chairman: Okay. Is this in the reprinted version?

Mrs Sullivan: No.

The Vice-Chairman: Perhaps if you could point out the—

Mrs Sullivan: The difference is a renumbering. After subsection 5, we have added new subsections 6 and 7, which relate to emergency workers, then we renumber subsection 8 and so on.

The Vice-Chairman: So subsection 7 becomes 8. Is that right?

Mrs Sullivan: The current subsection 6 becomes 8.

The Vice-Chairman: All right.

Mrs Sullivan: There are new subsections 6 and 7 relating to emergency workers.

The Vice-Chairman: Yes, all right. Is 5b—

Mrs Sullivan: It is in the amendments which you have before you now.

The Vice-Chairman: So 5b remains as in the amendments which were tabled before.

Mrs Sullivan: That is correct.

The Vice-Chairman: All right. Do you want me to read it?

Mr Dietsch: Do you want me to read it?

The Vice-Chairman: Maybe you should read it, yes. Do you want to read it or do you want to dispense with that?

Mr Dietsch: I think we can dispense with it. That is the reason for bringing in the hard copy, unless the members want me to read it. They may like the sound of my voice. I would consider that a compliment. I can do it with enthusiasm and feeling.

The Vice-Chairman: Mr Dietsch moves that section 3 of the bill be struck out and the following substituted therefor:

"3. The said act is amended by adding thereto the following sections:

"5a(1) An employer, throughout the first year after an injury to a worker, shall make contributions for employment benefits in respect of the worker when the worker is absent from work because of the injury.

"(2) Contributions under this section are required only if,

"(a) the employer was making contributions for employment benefits in respect of the worker when the injury occurred; and

"(b) the worker continues to pay the worker's contributions, if any, for the employment benefits while absent from work.

"(3) If the board makes a finding that an employer has not complied with its obligations under this section, the board may levy a penalty on the employer to a maximum of the amount of one year's contributions for employment benefits in respect of the worker.

"(4) The employer is liable to a worker for any loss the worker suffers as a result of the employer's failure to make the contributions required by this section.

"(5) For the purpose of determining a worker's entitlement to benefits under a benefit plan, fund or arrangement, a worker shall be deemed to continue to be employed for one year after the date the injury occurred by the employer of the worker on the date of the injury.

"(6) If a worker is injured while engaged in employment described in subsection 1(2) or (4), the worker's employer, other than the employer described in subsection 1(2) or (4), shall be deemed to be the employer for the purposes of this section.

"(7) If an employer makes contributions under this section in respect of a worker described in subsection 6, the employer described in subsection 1(2) or (4) shall reimburse the employer for the contributions.

"(8) This section does not apply to employers in respect of multi-employer benefit plans.

"5b(1) If, at the time of the injury, a worker was entitled to benefits from a multi-employer benefit plan, the trustees of the plan shall continue to provide the worker with the benefits throughout the first year after the injury when the worker is absent from work because of the injury.

"(2) The trustees of a multi-benefit plan are liable to a worker for any loss the worker suffers as a result of the trustees' failure to comply with subsection (1)."

Perhaps you could explain the reasons for your motion, or Mrs Sullivan can.

Mrs Sullivan: The amendment to section 3 of the bill relates to the obligation on employers to provide employment benefits for injured workers when the worker is away from work as a result of the injury and sets out the nature of the requirements in terms of time as the first 12 months of absence from work due to an occupational injury and also provides for penalties for the employer who does not maintain those contributions.

The new section which members of the committee did not have before them today provides for the benefit coverage for workers who are engaged in emergency work. I could just suggest to you that such workers may be, by example, volunteer firefighters, who might otherwise not be covered in a clear way under the benefit provisions.



I should say that this provision is new for employees who did not already have this kind of coverage under a collective bargaining agreement, which I suggest is a large number of employees. It is seen as a forward-looking amendment and one which provides a considerable new assurance for workers who have been injured on the job.

1620

Mrs Marland: I have a question. Do you feel, Mrs Sullivan, that the description for emergency worker is clear enough in terms of the whole range of people that would be eligible, and would it include emergency workers on a part-time basis?

I am thinking of forest firefighting, for example, where they are just hired on for the summer or they may be hired on in an actual emergency. Certainly, I guess, the chairman is familiar with that in his riding.

Mrs Sullivan: Miss Martel, the definition of worker generally--

The Vice-Chairman: Mrs Marland.

Mrs Sullivan: I mean Mrs Marland.

Mrs Marland: That is nicest thing that anybody has said to me today. I just dropped 20 years. Make me 30.

Mrs Sullivan: If I could just refer you to clause 1(1)(z) of the current act, look at the definition of "worker," which under subclause 1(1)(z)(ii) includes "a member of a municipal volunteer fire brigade or a municipal volunteer ambulance brigade"; under subclause 1(1)(z)(iv), "a person summoned to assist in controlling or extinguishing a fire by an authority empowered to do so"; under subclause 1(1)(z)(vi), "a person who assists in connection with an emergency that is being declared to exist by the head of council of a municipality or the Premier of Ontario," and under subclause 1(1)(z)(vii), "an auxiliary member of a police force." I am just wondering if under subclause 1(1)(z)(v), the search and rescue operations workers would also be considered emergency workers.

The Vice-Chairman: Subclause (vi) would respond to the particular example Mrs Marland raised, in that this is "in connection with an emergency declared to exist by...the Premier of Ontario." I would think that would apply to people who are commandeered off the street to fight fires in a forest fire emergency.

Mrs Marland: Okay. I experienced at first hand the train derailment in Mississauga in 1979, in that case a chlorine leak, where they did try to have, once we got organized, professional firefighters and, of course, the professionally trained police officers on site. But when an emergency occurs, people are put into employment in an emergency situation and that is why I am wondering if an emergency worker in that case would be protected. Maybe what you have to do is just go with the specifics that you have got, and it is limited to that number of people from your answer.

The Vice-Chairman: Mississauga was declared an emergency by the then Premier.

Mrs Sullivan: I think, Mrs Marland, if you understand that this section relates to ensuring that the benefits are paid for that period, when

you refer back to the definition section of the existing act, what we see in subsection 1(2) is, for the purposes of maintaining the benefits, the person who summoned the person to assist in the emergency would be responsible for paying the normal employer for the cost of the benefit coverage. That is what this section does.

Miss Martel: I thought the wording was to mean that the worker's regular employer, other than the employer described in subsection 1(2) or (4), is actually the one then tied with the responsibility of making the payment on the worker's behalf.

Mrs Sullivan: That is right, and the other party who has summoned them reimburses the original employer.

The Vice-Chairman: So that in the case of a municipal volunteer fire department, if the person is a volunteer and he gets hurt fighting the fire, his employer will continue to pay his benefits and the municipality would then have to reimburse the employer?

Miss Martel: The reimbursement part is coming under subsection 7 instead of 6?

Mrs Sullivan: That is right.

The Vice-Chairman: Just for clarification, can I ask---and this may sound very parochial, but I am sure my friend the member for Algoma-Manitoulin (Mr Brown) would be interested as well---if you look at the definitions in here in terms of a fire brigade, it talks about a municipal fire brigade. Is there anywhere in this section, or elsewhere in the act or in the amendments, anything that would cover a volunteer fire team in an unorganized township? In that case, it is not a municipal fire brigade; it is a fire team that is set up under the auspices of the Ministry of Northern Development and Mines and the Solicitor General.

Mrs Sullivan: Yes. Under subclause 1(1)(z)(iv), a worker is described as "a person summoned to assist in controlling or extinguishing a fire by an authority empowered to do so." Also, clause 1(2)(a) states that "an authority who summons a person to assist in controlling or extinguishing a fire as mentioned in subclause (1)(z)(iv), shall be deemed to be the employer of the person." So in one case we have the person who is summoned by the authority and in the other case we have the authority summoning the person.

Mr Dietsch: For the sake of working our way through this amendment, being as it is a rather lengthy one, and as opposed to questions skipping all over the place, if you will, for lack of better terms, I wonder if you want to just move through it an area at a time, so that questions can be asked by the members and then we can work our way down.

1630

The Vice-Chairman: That is fine. Just in terms of dealing with questions, yes, we can deal with subsection 5a(1). Are there any questions on the first subsection?

Miss Martel: The question I have comes in the whole context of how long these benefits are going to be provided to a worker. Subsection 5a(1) states that an employer, throughout the first year after an injury to a worker, shall make contributions for employment benefits when that worker is off.

Members will recall that during the course of the public hearings, around the question of serious injury a number of groups made mention of this point and stated that many workers suffering a serious injury were off longer than one year; and therefore, for the period of time they were off and until temporary disability, the employer should be under an obligation to provide them with the benefits through that whole period during which they were off.

I would like to know why, instead of pursuing that angle, the ministry has decided that the benefits will only be paid up to and including the first year the injured worker is off, when with many serious injuries, people would be off much longer than that.

Mrs Sullivan: The rationale for the obligation on the employer ending at the end of the first year is that that is the time the first determination of the wage loss is made; included in that wage loss determination would be the valuation of the employment benefits contributions. As a consequence, it is a logical end to the time period before the actual wage loss is determined, which would be statutorily at the end of one year.

Miss Martel: If I may continue, I go back to page 10- it may be page 11; I am working from a different copy---and in fact there is another alternative.

Subsection 45a(6) outlines where and when the board may make a determination of future loss of earnings. Members of the committee will see that it lists three cases where that may occur:

"(a) in the 12th consecutive month during which the worker is temporarily disabled;

"(b) within one year after notice of the accident in which the worker was injured is given under section 20...; or

"(c) within 18 months after notice of the accident in which the worker was injured is given under section 20..."

So the supposed limitation of employment benefits to a year, by tying that to the determination of future loss of earnings, would in my mind, reading this section, allow that to go on for at least 18 months before the injured worker would actually be assessed for future loss of earnings benefits. I am wondering again why we tied it to 12 months when the legislation also specifically allows the board to carry total temporary benefits on for up to 18 months if the worker has not achieved maximum medical rehabilitation after one year.

Mrs Sullivan: If we look at clause 45a(6)(c), what we are seeing here is a situation that would be the exceptional situation, where the worker's medical condition precludes a determination within the time limits set out in clause (a), which is the 12th consecutive month; or clause (b), within a year after notice of the accident in which the worker is injured.

I am reading from page 9 of the original bill.

Under subsection 45a(7), the board can extend the time limits in terms of the determination of the compensation payable for the wage loss award, but we really anticipate the extension required under clause 45a(6)(c) would be the exception rather than the rule.

Miss Martel: I think that for many workers suffering serious injuries, it is not going to be the exception but rather the rule. I do recall that we had a number of people, particularly in some of the forestry industries, who said that a year was not in any way, shape or form sufficient, that many of their people who suffered serious injuries were off much longer than that; and that given the fact that the benefits they were on when they were on workers' compensation were far less than what they had been entitled to when they were actually working, we were going to be putting undue hardship on these people by, after one year, making them responsible for the benefits they were picking up on behalf of themselves and their families.

I think what subsection 45a(7) is trying to say is that the time limit will be extended if workers' compensation is denied and a representative like myself or anyone else is actually appealing, in which case he may receive some kind of benefits after the appeal is heard if the board determines in his favour. What I am particularly concerned about is that if we are going to tie this benefit to some kind of time line already indicated in the bill, and that is what the ministry has tried to tell me it is doing, would it not make more sense if we were to tie it to the reinstatement obligations of the employer?

We are all aware that the employer has an obligation of up to two years from the time of the accident to take that worker back. When the employer takes the worker back, we obviously assume the employer then continues to assume the employment benefits the worker was receiving until the point he was actually injured. So it would seem to me to make some sense, if we are going to tie this section to something, to tie it to the obligation of the employer that he has to reinstate.

In that way, we can be assured that there is no break in the period of contributions the employer would normally make on behalf of the worker; if he would be making it while the person was working normally, regularly, he would be making the contributions on behalf of the worker when he was injured and off the job, and once again his obligation would continue as soon as that worker returned to his employ within the two-year time period.

I think we would then be allowing for a far greater number of people who will suffer serious injury and who will be punished under this section, because after a year their benefits in that regard will be cut off, and we will be ensuring that the employer's obligation is actually ongoing: He picks it up when the worker starts in his employ, he picks it up when he is hurt and he continues with his obligation when the worker returns to his employ after two years.

I will move an amendment to the same; I will have to have that written up. But what I am suggesting to the committee here is that if we are going to tie it to something, it seems to me far better to tie it to the employer's reinstatement obligation, because that worker hopefully will be coming back to his or her employ within the two-year time limit.

Mrs Sullivan: I really do not see the logic of Miss Martel's argument. The reason for tying the benefit coverage to the one-year period following the injury is that at that one-year point a determination of the wage loss will be made, whether or not there is maximum medical recovery.

Miss Martel: No, no. They have up to 18 months in clause 45a(6)(c).

The Vice-Chairman: Miss Martel, I am going to suggest that if you would like to move an amendment to subsection 5a(1), you could move it, and



then we could debate the amendment, as essentially what is happening is that we are getting into debate.

Miss Martel: Okay. I am going to need some help from Laura. Do you want me to continue to speak to that while Laura drafts it?

The Vice-Chairman: Perhaps we could recess for five minutes—whatever the committee prefers. It is acceptable to me that you continue to speak to the motion.

Mr Dietsch: I would prefer to hear the motion put forward or see it, because it makes it easier to understand.

The Vice-Chairman: All right. We will recess for five minutes.

The committee recessed at 1642.

1701

The Chairman: Miss Martel moves that subsection 5a(1) of the act, as set out in Mr Dietsch's motion to strike out section 3 of the bill, is struck out and the following substituted therefor:

"(1) An employer shall make contributions for employment benefits in respect of an injured worker during the period described in subsection (1a) when the worker is absent from work because of the injury.

"(1a) An employer is obligated under this section until the day that is the earliest of'

"(a) two years after the date of the injury to the worker;

"(b) one year after the worker is medically able to perform the essential duties of the worker's pre-injury employment; and

"(c) the date the worker reaches 65 years of age."

Miss Martel: Now if I can speak to that, Mr Chairman?

The Chairman: Yes, and the clerk will make copies for members.

Miss Martel: What the amendment has done is this. Basically, without referring in numerical terms back to subsection 54b(8), which is the reinstatement section and outlines the length of the obligation of the employer with regards to reinstatement, legislative counsel has put in, in almost the same wording what that obligation is on the employer under the reinstatement section. We have tied the obligation of the employer not to what the obligation is on the board with respect to determining the future loss of earnings, but to the actual obligation which is already on the employer to reinstate or rehire an injured worker.

The reason we have not named that section specifically is because a number of employers have no obligation to reinstate, such as those people in establishments with less than 20 employees, etc, or where a worker has less than one year's continuous employment.

For all of those people under section 54b who technically are excluded from the obligation to reinstate, we just strictly have put in the obligation

almost word for word as it appears here without saying that we have pulled them from that section, so that there is no confusion for those employers who say: "Well, I'm not under an obligation to reinstate. Why should I be under an obligation to pay employment benefits for the length of time that other employers who have to reinstate are going to be paying?"

If we are going to be tying benefits to anything, I think it is far more appropriate that we do not look at the much narrower limitation that appears under the future loss of earnings section, section 45.

The reason I say that is that I know 18 months is not as much an exception as members of the committee might like to believe. In fact, for anyone suffering a serious injury—and in our part of the world that is fairly common, if people are bush workers or miners—18 months off the job is not a long time, especially given the fact of how long it takes either to get appropriate medical referrals to any number of specialists, or to receive appropriate rehabilitation, in the sense of medical rehabilitation at a hospital.

I really do not think the time line that is laid out, that is, 18 months, is an exception or to be used only in special cases. I think it is extremely appropriate, in northern Ontario in particular. It is nothing to have a serious injury where a worker is off 18 months, for some of the people that I represent.

That is why I am moving that we not tie the employer's obligation to provide employment benefits to anything in that section, but go directly back and put the onus on the employer who will, when he reinstates the worker, have to continue paying the employment benefits anyway.

Surely it makes more sense to have that obligation on the employer ongoing, and allow for either the full two years which may be his obligation or the earlier of any of the dates that appear under the employer's obligation. Surely it makes more sense to have the onus placed on the employer to continue that obligation until the point he takes back the worker.

That would solve the problem we got into in here last week, it seems to me, where I wanted the onus to be on the board to determine what the employer's benefits would be and the actual amount. We talked about having that information appear on the accident form. This motion would do away with some of that problem because the obligation on the employer would not cease unless in fact he is not going to reinstate the injured worker for whatever reason.

Certainly it would solve a lot of the problem of the confusion that is going to come about when people come off after having received a year of employment benefits, are still not rehabilitated to the point where they can return to work and that is going to have to be picked up somewhere else. What this motion would do is end most of that confusion and allow for an ongoing payment right to the end of the employer's obligation with regard to the injured worker.

The time lines we are using go back to the reinstatement section but we have not specifically named the section to avoid confusion for those employers who do not have any obligation to reinstate in the first place.

The Vice-Chairman: Miss Martel has moved an amendment to the amendment. Mrs Sullivan, do you consider this a friendly amendment?

Mrs Sullivan: No. Surprise.

Mr Dietsch: I think we consider it friendly but unacceptable. Miss Martel is always friendly.

Mrs Sullivan: In speaking to Miss Martel's amendment, I am going to be referring back to the government amendment which is being proposed, but also in doing that I want to go back to a kind of time line relating to the original amendment to the bill and to the initiative in the bill which provides a new benefit for injured workers.

As you know, now, after an injury, under section 40, a worker is eligible for temporary benefits and those temporary benefits are based on "90 per cent of the worker's net average earnings before the injury so long as the temporary total disability continues"—and of course the amendment that we are putting in—"or until the worker begins to receive payments under section 45a."

I want to remind you that in subsection 1(1)—and I am sorry if I am making this complicated, but it is very complicated—"earnings" and "wages" include any remuneration capable of being estimated in terms of money," and we have amended that to say, "but does not include contributions made under section 5a for employment benefits."

Under section 5a, the obligation to pay for the benefits for injured workers, the employer's portion of those benefits, is for a period of a year following the injury.

Once again I am going to have to ask you to refer to subsection 45a(6), to which Miss Martel referred, the three clauses of that. If you look at clause (c), what would happen at the end of that year? If a wage-loss determination were not made, the temporary benefits would continue until it was appropriate, because of the worker's medical condition, that a determination of the full wage loss could be made, in which case the benefit coverage under section 5a would cease and the temporary benefits would change to include the value of the contributions for employment benefits made under clause (a).

So at the end of the year, although the obligation is no longer there on the employer to contribute the employer's portion of the benefit coverage, that value would be taken into account and there would be an alteration made in the compensation to the worker under temporary benefits provided under section 40.

1710

Basically, what we are doing here is placing a new obligation on the employer and it is a new benefit for the worker. As the situation exists now, the employer does not contribute to the continuation of employee benefit plans unless they have been negotiated through a collective bargaining agreement. I should remind you that something less than 70 per cent of our workers do not have collective bargaining agreements. As a consequence, this is a substantial new benefit for the majority of our workers.

Mr Philip: Can I ask a question of the acting minister? I am always suspicious of the fudge words that are included in certain bills. I am wondering if the minister can verify her understanding of what the words "where possible" mean and provide me with some examples of where it might not be possible to give those benefits which she just discussed.

Mrs Sullivan: In clause 45a(6)(c). I would suspect—and I am going to ask Mr Clarke from the ministry to assist me on this—that this may be both a situation where the injured worker may be improving or where there may not be adequate improvement for a determination of, indeed, what the final or the first wage-loss determination would be.

There may be a situation where there has been improvement. There may be a situation where there has been a deterioration. As I indicated earlier, it is anticipated that clause 45a(6)(c) will be the rarity rather than the usual situation. In most cases the determination will be able to be made at the end of the 12th consecutive month following the temporary disability or the notice of action of the accident. I am going to ask Mr Clarke if he could speak further to that.

Mr Philip: Before he does, perhaps I could have a couple of questions answered by Mr Clarke.

Would it be possible—again I use the word "possible"—to imagine that you could have somebody not covered by clause 6(c) and also not covered by your section 5a first-year provision and therefore, in fact, be in no man's land where nothing would happen? Is that possible or am I misunderstanding what you are trying to do?

Mr Clarke: I am trying to envision such a scenario and I cannot think of one that comes to mind. Could I answer the question on "where possible," if that was the original question?

Mr Philip: Okay.

Mr Clarke: I am going to do the bureaucratic shuffle here and say that you may also want to ask this of legislative counsel. My understanding of why we use the phrase "where possible" is simply this: what we were trying to do was place sharp time lines on the board as to when it should make these determinations.

In other words, what we would like to be able to say is, "The board shall determine the amount of compensation payable under this section either here, here or here." But if we write it that way and the board misses that time line, then what? We want to make it clear that there can be circumstances where, for whatever reason, the board does not make a decision when it is supposed to have made one within the time line. You would not want to disqualify any worker from the benefit in that event, so we put in the phrase "where possible" so that if, for some reason, it does not happen, an employee can still make the determination and not be precluded from that. That is my understanding of why we have the phrase "where possible."

Miss Martel: Before we go any further on that section, as I see it, we have got three time periods where something must occur and at one of those three time periods the worker would be assessed for a future-loss-of-earnings benefit.

I do not see anywhere in this bill where it says that after the 18 months the worker is still eligible to continue on IT. My reading, and I may want to get a clarification from the legislative counsel, is that after the 18 months he is going to be brought in and he is going to—I hate to choose the word "deemed"—be considered to see if he is going to get any kind of benefit under future loss of earnings. I do not see any provision in here for him to continue on TI after 18 months if he has not, in fact, reached maximum medical recovery.



The Vice-Chairman: Can legislative counsel comment on what "where possible" refers to? Does it refer to the time frame but does not preclude the board providing benefits beyond that time frame if it has been impossible to meet the time frame? Is that what it means, in your understanding?

Ms Hopkins: I think the legal concern is that in the absence of the words "where possible," if the board missed the deadline set out in the statute, the board could not act and so the worker would be deprived of a benefit because the board had missed a deadline.

Perhaps a deadline might be missed because a worker's medical records are destroyed in a fire or something like that. So by adding the words "where possible," what you do is leave the entitlement of the worker in place even if the board misses the deadline for reasons beyond its control.

The Vice-Chairman: Does that clarify it for you, Mr Philip and Miss Martel?

Miss Martel: No. I have to go back to the question of what happens after the 18 months in the case of this injured worker who, after 18 months, has not recovered to the point where he can be assessed.

Mrs Sullivan: If I could help with that, Mr Chairman, I think if we look at section 40 of the act, with the proposed amendments, and read that, the addition through Bill 168, at the end of section 40, would read, "or until the worker begins receiving payment under section 45a."

Miss Martel: Okay, I am in section 40. Where is the addition you are making?

Mr Dietsch: Section 40 on page 52 of the act.

Miss Martel: Got it.

The Vice-Chairman: And which amendment are you referring to? Which section of the bill?

Mr Clarke: Section 11.

The Vice-Chairman: Section 11 on page 3. Does that answer your question, Miss Martel?

Miss Martel: Yes, thank you, it does.

The Vice-Chairman: Mrs Sullivan had the floor on the amendment to the amendment when she was interrupted for questions.

Mr Philip: I thought she was finished. That is why I asked my question. I am sorry if I interrupted.

The Vice-Chairman: No, it is no problem. I just wanted to give Mrs Sullivan the opportunity to finish her remarks.

Mr Dietsch: I think her train of thought has been derailed here. It's called diversionary tactics.

Mr Philip: It is purely unintentional, I assure you. It had nothing to do with guerrilla warfare on my part.

Mrs Sullivan: I have lost the amendment too. Does anybody have a copy?

Mr Philip: Sometimes even people with a bad aim hit the target, you know, accidentally.

Mr Dietsch: They call that boomerang.

1720

The Vice-Chairman: At the time of the question, you were referring to subsection 45a(6), on page 9 of the bill.

Mrs Sullivan: Right. In conclusion, the wording of the amendments and the original proposals in Bill 162 are designed to ensure there is a significant new benefit for employees that they do not receive now. It is a protection that will benefit close to 70 per cent of workers who do not have a collective bargaining agreement. It would ensure that these benefits are paid, and possibly more, workers who may already have a collective bargaining agreement that does not include this kind of protection.

Once again, at the end of the period of the employer obligation to cover the employer portion of the benefits, when the wage-loss determination is made, the value of those benefits would be included in the wage-loss determination if the worker suffered a permanent impairment.

Miss Martel: Can I ask what we do between the gap, where we have a worker whose benefits in this regard—there is the employer's payment on his behalf of health care benefits—would expire after one year, and he himself would not be rated under section 45 for future loss of earnings benefit until 18 months after?

We have a six-month block in there where, as I take it, the worker would be off, would not be in receipt of the new benefits, but would not be eligible to be entitled to those benefits until such point as he was rated for future loss of earnings. Then the employment benefits would be added on to the compensation he would receive.

Mrs Sullivan: At that point, the section 40 temporary benefits would kick in and the value of the contributions for employment benefits would be added to the temporary benefits the worker receives under section 40. Section 40 is only limited by the provisions of section 5a.

Miss Martel: If I may get a clarification, I was under the impression that the employer benefits were not included in the calculation of temporary total, but were included in the calculation of the future loss of earnings.

Mrs Sullivan: For that one-year period. At the end of the one-year period, which is section 5a, that is when the valuation of the benefit coverage is included in the calculation of the temporary benefits and there would be an increase in what the worker is receiving.

Mr Clarke: What that means in practice is that you have somebody who is off on temporary benefits, and during that first year, his temporary benefits based on his wages and salaries will not have included the employer costs of those benefits that are being maintained at the end of the one year, either when earnings loss or what is being calculated—or if they are still

going to be on temporary benefits, then the temporary benefits will have to be recalculated to include the cost of those benefits as under --

Miss Martel: Yes, where?

Mr Dietsch: I think it is important to note that therefore the employer is not paying twice on those benefits in the calculation.

Mr Clarke: That is correct.

Miss Martel: What I would like to know is---can I redirect it back to the section where we dealt with that?---was that one of the first parts we dealt with that said in fact---

Mr Clarke: Yes.

Miss Martel: Okay, because I have "contributions for employment benefits," subsection 1(1).

Mr Clarke: Yes, if I might, the very first clause of the bill, on page 1, clause 1(1)(ea), sets out what the contributions for benefits are. Then subsection 1(2) said---it was the section that amends. Under the current act, clause 1(1)(i), we say "'earnings' and 'wages' include any remuneration capable of being estimated in terms of money," and then we have said, as Mrs Sullivan pointed out, "but does not include contributions made under section 5a for employment benefits."

As soon as you are no longer extending benefits under section 5a, then you include the costs of those under clause 1(1)(i). Presumably you are under the earnings ceiling through all of this. You increase the base upon which the 90 per cent of net was calculated.

Miss Martel: I am sorry, Mr Clarke, does it not say, "but does not include contributions for employment benefits"?

Mr Clarke: "Under section 5a." As soon as you have stopped under section 5a, they are included. Section 5a has the one-year time line on it.

Miss Martel: Yes.

Mr Clarke: Once the year is over, then you are no longer being provided for under section 5a, so therefore they calculate it under clause 1(1)(i). What we have simply done is say to the employers, "If this is adopted, you will be required to maintain those benefits for that one year."

Miss Martel: Right.

Mr Clarke: "While you are maintaining those, you will not have to include your cost of those in your calculations of earnings and wages."

Miss Martel: "That you would put forward to the board."

Mr Clarke: "That you would forward to the board."

"At the end of that one year, whether you go on to an earnings loss or whether you are continuing on temporary benefits, from that point on you do have to include the cost of those in your reported earnings and wages to the board," and the board uses that in determining its calculations.

Miss Martel: So the guy's TT rate would change after a year.

Mr Clarke: That is right, presuming he is underneath the earnings ceiling at that point.

Miss Martel: Yes, then he is not going to be over and above when that kicks in. I think I understand this.

The Vice-Chairman: All right. Is there any other debate on the amendment to the amendment? Do you wish to close off debate, Miss Martel?

Miss Martel: If I can just go back, when this guy is back on TT, the employer's obligation would actually end at whatever point he was then rated or was brought in for future loss of earnings.

Mr Clarke: Yes.

Miss Martel: That could be well after 18 months. It could be two years. I think I have finished, Mr Chairman.

The Vice-Chairman: Do you intend to maintain your amendment? You are not withdrawing your amendment.

Miss Martel: No, I will maintain it.

Mrs Sullivan: She wants another 20 minutes.

Miss Martel: I am trying to recoup here.

The Vice-Chairman: Are we ready for the vote on the amendment to the amendment on section 3 of the bill, subsection 5a(1) of the act? Do you wish time? How much?

Miss Martel: Twenty minutes.

The Vice-Chairman: All right. We will recess.

Mrs Sullivan: On a point of order, Mr Chairman: I understand there is to be a vote in the House today.

The Vice-Chairman: The clerk has checked that and it is unlikely there will be a vote. The agreement was that the vote would take place at the end of the second readings on the bills that are being dealt with. They still have to deal with two bills, so it is unlikely the vote will take place today.

Mrs Sullivan: Okay.

Clerk of the Committee: If it should, perhaps we should have an agreement that this vote will take place at the beginning of Wednesday's meeting.

The Vice-Chairman: Yes, if that is acceptable.

Clerk of the Committee: If the bells upstairs ring.

The Vice-Chairman: If there are bells upstairs. We will adjourn and have the vote here at 11 minutes to six. If in the intervening time the bells ring upstairs, then is it agreed we will vote at the beginning of the session on Wednesday on this amendment?



Mr Brown: Could we not just agree that we will vote on it at 3:30 on Wednesday regardless of the situation and we can perhaps continue on with the business now?

The Vice-Chairman: Unless you are suggesting we adjourn 11 minutes early, the standing order sets out 20 minutes, so we cannot do that, unless you are suggesting we should adjourn early.

Mr Dietsch: We will probably use 15 of those up in the—

The Vice-Chairman: We stand adjourned. We will vote at 11 minutes to six.

The committee adjourned at 1731.

ARON  
C13  
S78

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT, 1989

WEDNESDAY 28 JUNE 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitution:

Charlton, Brian A. (Hamilton Mountain NDP) for Mr Laughren

Also taking part:

Sullivan, Barbara (Halton Centre L)

Clerk: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

Witnesses:

From the Ministry of Labour:

Sorbara, Hon. Gregory S., Minister of Labour (York Centre L)

Clarke, Richard, Manager, Policy Branch, Labour Policy and Programs

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 28 June 1989

The committee met at 1532 in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Section 3:

The Vice-Chairman: I see a quorum, so we will go ahead with our deliberations on Bill 162, An Act to amend the Workers' Compensation Act. When we last adjourned, we had before us an amendment to section 3 proposed by Miss Martel and we are to vote on that amendment now. Do you want me to read the amendment? Dispense?

Oh, yes. The clerk reminds me that when we dispensed with reading the government amendment last time, it was not picked up in Hansard, so we will have to read all amendments at least once so that they are recorded in Hansard.

All those in favour of Miss Martel's amendment?

Miss Martel: Could we have a recorded vote, please?

The Vice-Chairman: Okay.

The committee divided on Miss Martel's motion to amend section 3 which was negatived on the following vote:

Ayes

Charlton, Marland, Martel, Wiseman.

Nays

Brown, Dietsch, Lipsett, McGuigan, Stoner, Tatham.

Ayes 4; nays 6.

Mr Dietsch: I wonder, Mr Chairman, for the benefit of the point you raised earlier, perhaps now would be an appropriate time to --

The Vice-Chairman: I will do that, but before we do that we have a letter which the clerk has received. I think it has been circulated to members. I would like, if it is acceptable to the committee, to deal with this letter first. It is a letter from Koskie and Minsky, Barristers and Solicitors

"Dear Sirs:

"Re: Bill 162, An Act to amend the Workers' Compensation Act  
"Re: Multi-Employer Benefit Plans"

This refers to the amendment that is before us.



"We have just become aware that the Ontario government has tabled before the standing committee a motion to amend Bill 162. More particularly, the government has proposed amendments to those parts of the bill dealing with the maintenance of contributions for employment benefits for the first year of a worker's absence due to a compensable injury (see section 5b of the proposed amendment).

"We are in the process of being retained by trustees of certain multi-employer benefit plans for the purpose of opposing the proposed amendment. Obviously then, we shall require a reasonable opportunity to prepare appropriate submissions to the committee. We therefore request the committee to defer its consideration of the amendment until we have been able to prepare these submissions.

"We would appreciate hearing from you at your earliest convenience.

"Yours very truly,

"Koskie and Minsky."

They have asked if we could defer our consideration of the amendment. I am in the hands of the committee. Perhaps the minister would like to comment first.

Hon Mr Sorbara: As you know, the amendments that were proposed and that you all have copies of attempt to reflect the unique circumstances of multi-employer benefit plans in that part of the bill which deals with the obligation of employers to maintain a variety of employee benefits for a period of a year after the injury.

I know members of the committee are familiar with the amendments that have been proposed. I want to suggest to the committee that the concerns Messrs Koskie and Minsky are raising at this point are ones we want to investigate fully, to make absolutely sure that the principle in the section of the bill we are dealing with is appropriately reflected in those unique circumstances where employee benefit plans are multi-employer, and this relates primarily to the construction industry.

In that regard, I have asked officials within the ministry to meet on an urgent basis with Messrs Koskie and Minsky to hear their concerns, as well as meet with others who are directly affected. What I would suggest to the committee is that this take place and we can report back to the committee if it is determined that we need to do some fine-tuning of that section.

I do not think the principles of the bill are under dispute. The only issue is whether the principles in these unique multi-employer benefit plans have been appropriately encapsulated in the wording of the section as it stands in the amendment. So that would be my suggestion.

The Vice-Chairman: Before we open it for comments from the committee members, I should make it clear that our clerk has informed the legal firm that it is quite acceptable for it to make a written submission to the committee. The question before us is therefore not whether or not they can make a submission—they can indeed make a submission—it is whether or not we defer dealing with the amendment until that submission is presented to the committee. Do any members wish to comment?

1540

Miss Martel: I had a chance to talk to Mr Koskie at great length earlier this morning, particularly about the concerns he has, and the concerns the union that he is in a position of representing right now has, with this particular section of the bill. He has every intention of meeting with his clients over the course of the weekend and will be in a position of preparing and submitting to this committee by Wednesday, he told me, a written submission on their concerns, outlining how they think the present section can be changed in order to better reflect what the intentions of the government are in this regard.

I certainly think we should wait until we have the benefit of that submission before us, particularly because this is a new section which was not in the original Bill 162 introduced in June, nor was it in the section introduced by the minister in the amendments some four or five weeks ago. We are looking at a new consideration, and I think this group in particular should have a chance to respond to that.

I also suggested to him that he need not worry, because we would probably not get to that section of the bill either today or tomorrow anyway, but I do think we should make some decision here that if we do get that far, we will postpone any further questions and go back to some of the other deliberations that we had to postpone on Monday.

Mrs Marland: That would be our position also. That is what I was going to suggest before the minister spoke.

Mr Dietsch: In recognition of the speed with which we have been moving over the last few weeks, I suggest we now have to go back and deal with the previous section, on which we have had an opportunity to have input with respect to the interpretation of "student." By the time we get to section 5b -I think Miss Martel will probably know better than I about the speed with which we will move forward from this point on.

The timing being what it might be indicates to me that Mr Koskie and Mr Minsky will have an opportunity to get their viewpoint before the committee during that consideration. If by chance a rapid rate of business passes by this committee, we could always stand down section 5b and deal with it at that time. I do not think it is necessary that we have a particular motion today, but it is relevant that we be aware of that before we get to that clause.

Hon Mr Sorbara: From the perspective of the government, the government would not be concerned at all if the committee, having arrived at that section, decided to stand it down until discussions can be completed. I just note that on Monday we will all be celebrating a holiday weekend. I suppose the next time this committee will meet after tomorrow will be on Wednesday.

I make no comment at all about the pace of the committee's deliberation. Suffice it to say that we are undertaking within the government and the ministry to try to understand completely the concerns raised by Messrs Koskie and Minsky. We believe those concerns can be completely aired and responded to within the next week or 10 days at the outside.

The Vice-Chairman: It has been suggested that if we reach the section before we have received the submission and before the minister has got back to the committee, then we can stand it down. Is that the consensus of the committee?

Mr McGuigan: Just for clarification, are Koskie and Minsky going to appear before the committee?

The Vice-Chairman: No. The clerk has made it clear to them that we would not be opening it up for hearings but that they could make a written submission.

Mr McGuigan: All right.

The Vice-Chairman: Now, we did defer some sections of the bill until Mr Clarke was able to get some clarification. Do you wish now to move to those or to deal with the amendment on section 3? I would suggest we go back to Mr Clarke's clarification on the other sections, if that is acceptable.

Mr Dietsch: Then it is easier to know what has been dealt with at that point.

The Vice-Chairman: Yes. Then we can move along at a considered and sensible rate.

Mr Dietsch: Not to be exceeded by rapid movement.

Mr Clarke: I again thank the committee members for indulging my need to refresh my memory.

There were two questions, I believe, asked by Miss Martel with respect to clause 1(3)(xb) of the bill. This is with respect to the definition of "student." I will just take a minute to do this and repeat a little bit of our conversation of the other afternoon before we moved on.

Under the current act, as we were saying, there are two occasions in which the Workers' Compensation Board can statutorily look beyond the worker's earnings in determining what the worker's earnings are for the purposes of compensation. That is with respect to a learner, someone who is beginning to learn a particular job and is being paid at a lesser rate than that person would earn in that same job when he has moved beyond the learner status, and to an apprentice who is in an apprenticeable trade and who is working towards his journeyman's certificate when, again, he would be earning the full rate and not the lesser rate that he earns at whatever stage in his apprenticeship program he is at. In those two instances, the board can look beyond their actual current earnings at the time in assessing their earnings loss.

Our concern, and the reason for us including a provision with respect to a student in the bill, was that students who are "pursuing formal education," which is the phrase that we used in this clause, and who are out there working and earning their way as they go, however they may be doing that—whether that is through a co-operative education program or indeed for the summer as the students are now—are likely going to be employed in jobs other than the one in which they are training for. They may be off in the bush earning more than they are going to earn when they finish the program or they may very well be working in the service industry earning a lot less than they will be when they have completed their program.

So we were attempting in clause (xb) to add students in those situations to apprentices and learners, to include people who are not fully employed in the work force but who are in fact in the middle of training.

With respect to what we meant by formal education, I wanted to make sure

that there was—we have had discussion about semantics in the bill before—a common understanding within the education community of what formal education means. My memory was a little vague.

I have checked with education authorities and what it is normally considered to mean is someone who is involved in a formally recognized program at a recognized school and in a program that results in a certificate, a diploma or a degree. That would cover universities, colleges, applied technological institutions, high schools, and places like DeVry which is a privately administered school rather than a publicly administered school but is recognized by the government and provides a certificate: that kind of range of program.

With respect to the earlier part of Miss Martel's question about full-time and part-time, I had begun to speak a little bit about where that break is.

Again, I have checked and in terms of the Canada student loan program and the Ontario education grant and loan programs, a full-time student is considered to be anyone who is partaking of 60 per cent of the course. That can be done in a variety of ways. It can be when you are in a course that normally has five classes to it at a time, so if you are taking three of the five classes, you meet the 60 per cent. In other cases, it may be in a technical school where they tend to use an hour system where 25 hours is the normal instruction time per week, and 15 is the cut point they use to represent the 60 per cent. In other programs, you are expected to be working towards X number of credits in a semester or in a year and again they have used 60 per cent of those, so that is the cut point there. The full-time student is anybody who is partaking of 60 per cent or more of the program.

#### 1550

Mr Wiseman: Could I ask Mr Clarke about the student part? The other day when we were having a break between votes, you explained to me why this definition was in here and I had mentioned to you that on a couple of occasions since I have been a member, I have had students working in—it was not McDonald's, but something like a McDonald's, fast food, and working about 20 hours a week.

In one case, the young student was hurt quite badly—you would wonder how she would be, but she was—and when I checked into it with the Workers' Compensation Board, all she could get was based on her 20 hours at the minimum wage for a student. She was hurt severely enough that she would not be able to go on and finish her studies or perhaps be gainfully employed in the future.

I would like to run it by Mr Clarke again and perhaps get it on the record. I think you did mention that day that the board now would make the decision that perhaps she was not a journeyman, but she was at the top level of that category for workers' compensation purposes. In other words, instead of getting student minimum wage, she would be considered at a much higher rate and that would help her a bit, not in this case but in future cases of getting a little better pension out of workers' compensation than under the previous regulations and act. Am I phrasing it the way we discussed it?

Mr Clarke: The kind of situation you are raising is the kind of situation this amendment is meant to deal with. The board would not be obliged



by the statute to look solely at what the worker was earning at that job at the time of the injury.

There are two amendments to the act in the bill. One is this clause (xb) we have been discussing, and also in section 20 of the bill, page 15 of the actual Bill 162, the first reading bill, clause 69(1a)(b), we then go on to say—this is where we are adding to the regulatory powers—"establishing criteria for determining the average earnings of an apprentice, learner or student for the purposes of subsection 43(6)," which is the earnings loss.

Mr Wiseman: You have an appeal to workers' compensation, or they may use some other method of calculating the settlement to a student in that case that I just mentioned. I am thinking now as a member in the future. If we have problems like that, is there a further appeal to the minister under that or is their word final?

Sometimes the adjudicators, in my opinion, have not used their hearts but have followed the letter of the law. I think it gives them some leeway in the legislation that is being proposed here, but hopefully they will use some common sense on it. I just thought if there were a final appeal to the minister, perhaps the minister might step in and correct the odd case.

Hon Mr Sorbara: If I could just answer that, the answer in short is there is not an appeal to the minister. I think probably if matters relating to workers' compensation were appealable to the minister, the Minister of Labour would do nothing but those issues. But those matters, I say to Mr Wiseman and the chairman, are certainly appealable within the appeal structure of the workers' compensation system and would be appealable to the Workers' Compensation Appeals Tribunal in those circumstances.

What the bill provides, as Mr Clarke indicated, is a new definition for "student" to resolve the very problems that you point out in your example. It provides the government with powers to make regulations so that the board will be empowered to more appropriately compensate individual students who are in those circumstances. Obviously, those regulations are subject to the scrutiny of the general public and part of it actually through the standing committee on regulations and private bills.

The short answer is no, it is not appealable to the minister. That is because the board is a schedule-free agency, independent of the decision-making of government. The appeal would go to the tribunal under regulations that will be promulgated by the government after the bill is passed.

Mr Wiseman: I would just like to say that this part is a step in the right direction. You feel as a member very hard done by when a student is hurt and the injury will be long and will affect her earnings for the rest of her life. She is only getting maybe \$4 an hour for 20 hours based on that. So I am glad at least they have the chance to appeal that to the board.

Mr Charlton: I guess that raises the other part of the issue. I think the intention of both the definitions, in clause 1(1)(xb) and clause 20(1a)(b) that Mr Clarke referred us to, is now reasonably clear to me. The question that remains unanswered is "...the board, subject to the approval of the Lieutenant Governor in Council, may make regulations,

"(b) establishing criteria for determining the average earnings of an apprentice."

Because the criteria are not set out in the legislation, and we have just been talking about the right to appeal to the tribunal, what happens if, first of all, there is a failure to make the regulation defining this section, or ultimately, what happens if the regulation is shown to be inappropriate in the appeal process? The appeal process is not able to amend regulations, so we have a situation where we are passing a piece of legislation that does not set out the criteria. How are we going to deal with that if either you fail to make the regulation setting out the criteria or the criteria are inappropriate?

Hon Mr Sorbara: I think that is an interesting and important question for a number of reasons, including the fact that during the public debate on Bill 162, there has been a lot of debate on the discretion of the board, policymaking within the board and administration within the board. Although the bill, as it is set out, uses the words "may make regulations" and that is an empowering provision, my understanding of issues relating to the making of regulations is that there is an element at least of "shall" in that provision itself. This is because where the matter is considered on judicial review, for example, the intention of the act would be that there would be a regulation dealing with this issue.

The other point to make is that historically in our system we have set out provisions like the ones we are considering here with the definition of "student" and the expansion of the system to provide for a special consideration of the circumstances of students and then remain silent. The silence also has legal implications. That means the board is charged with the responsibility of establishing policies and guidelines—

1600

Mr Charlton: That is what I am worried about.

Hon Mr Sorbara: —which are insulated from review by the Legislature and by the government because of the nature of the structure of the board; that is, an independent schedule 3 agency.

What we have done, and the reason why the regulation-making power section is so long, is to move in a significant degree from a situation where the act is silent and therefore the board is charged with determining a policy and establishing guidelines which can be changed at the discretion of the board, more into a system where there is accountability within government and Parliament.

You see, the difference is this: When a policy is established, the government does not have any authority over the determination of what that policy shall be. When the policy is put into greater certainty by way of regulation-making power, the government is accountable, because regulations are made not by the board or some third-party group; they are made by the government of Ontario.

Mr Charlton: I understand what you are saying and that is precisely why I am raising the question. The section as it reads says the board may make regulations. If this section said to me, "The minister may make regulations"—

The Vice-Chairman: Order. What section of the bill are you referring to?

Miss Martel: The old bill, page 15.

Mr Charlton: Page 15. It is the section Mr Clarke referred us to that goes with the definition of "student."

The Vice-Chairman: Clause 69(1a)(b)?

Mr Charlton: Yes, clause 69(1a)(b). But subsection 1a starts out by saying, "Without restricting the generality of subsection (1), the Board, subject to the approval of the Lieutenant Governor in Council, may make regulations."

Now, the minister has just said that the board cannot make regulations; the cabinet does that. We understand that in the process here, but that leaves the section vague. You have said the board cannot make regulations, but the section says it may.

Hon Mr Sorbara: No.

Mr Charlton: Here is my point, and I think this is a problem with this section. If you make the regulation and it is unacceptable, then you are right. We can rail at you in the House day in and day out until you change the damn thing, because you are responsible. If you pass a regulation, though—this would be legal under this section the way it is written—that says board policy shall establish the criteria, that would be legal. Then the board again, in policy, where we cannot get at it, establishes the criteria referred to in clause 69(1a)(b), and we are back into the same old problem. If this section clearly said "The minister may establish regulations establishing criteria for determining," then that would be one thing, but that is not what this section says.

Hon Mr Sorbara: This is one area where I have been able to develop no small bit of expertise over the past four years in my capacity as chairman of the cabinet committee on regulations. You have to understand all of the words in subsection 1a, so I am going to go over them again.

"Without restricting the generality of subsection (1), the Board, subject to the approval of the Lieutenant Governor in Council, may make regulations." The important words there are "subject to the approval of the Lieutenant Governor in Council." All regulations come to cabinet and are made by cabinet and cabinet has to be accountable for them.

Mr Charlton: We agree.

Hon Mr Sorbara: Now, there are a variety of charging sections in the statutes of this province when it comes to making regulations. Some say the minister, subject to the approval of the Lieutenant Governor in Council; some say the Lieutenant Governor in Council may make regulations. That always means cabinet, really. What we have here is a section that assigns the parties that—

Mr Charlton: Initiate.

Hon Mr Sorbara: —initiate the regulations.

Mr Charlton: That is the problem.

Hon Mr Sorbara: There is no dispute about that. But as a minister of the crown, as chairman of the regulations committee and as a member of cabinet, for us the process is ultimately one where cabinet makes the final

determination. So the board is not permitted. It does not have regulation-making powers.

Mr Charlton: You just hit on the key word that concerns me and that is the initiator of the action, which is the board.

Hon Mr Sorbara: There is no doubt about that.

Mr Charlton: What are you going to do when the board comes to you and says:

"Education is in a state of flux in Ontario society. As technology changes very rapidly day to day in this society, education is becoming more and more important and the focus of education is changing almost daily. We do not want to see you put in place a regulation that is going to tie the hands of this board. Therefore, we want you to pass a regulation empowering the board to establish the criteria by policy, so that we are in a position to change it as circumstances change."

We are right back into the board's ball game. How are you going to respond to that?

Hon Mr Sorbara: With all due respect, that regulation, I would suggest, would be ultra vires, because these statutes, particularly regulation-making power, are very closely scrutinized to ensure they do what the act charges ought to be done and only what the act charges to be done.

Again, I reiterate that the phrase "subject to the approval of the Lieutenant Governor in Council" means as a practical matter that the board, having initiated or proposed a regulation, will like every other branch of government send those regulations for consideration by cabinet. I have seen hundreds and hundreds of them and from the perspective of the government, the same criterion is always used; that is, does this reflect the best interests of—

Mr Charlton: I understand what you are saying about your experience in—

The Vice-Chairman: Order. This is an interesting and important debate, but it is a debate on section 20, when in fact we are supposed to be dealing with—

Mr Charlton: Section 20, as Mr Clarke pointed out, is the one that enables the section we are trying to deal with, which is the definition.

The Vice-Chairman: Okay; I understand that.

Mr Charlton: Until we can clear up the enabling, how can we decide whether the definition is appropriate or not?

The Vice-Chairman: You have a point.

Mr Dietsch: I think, Mr Chairman, you raised a valid point as well. I was waiting for the exchange and debate to finish before I brought it forward.

I think the difficulty is always the legislation and its overflow into other areas. I think, with all due respect, the appropriate points that are



being made are more relevant under section 20 when they are put forward. I recognize that the question as it first existed under the definition of "student" and the explanation as to "part-time student" and what constitutes a student has little effect on the debate of the last few minutes.

The Vice-Chairman: I think Mr Dietsch is correct. The argument that has been made that clause 20(1a)(b) is an enabling section that relates to the definition is quite correct. However, the debate we have been having is dealing with subsection 20(1a), the first part, which talks about the making of regulations. I think that is a debate that really pertains specifically to section 20, and I would prefer that debate take place when we are dealing with section 20. I am not trying to close off debate, but perhaps you can make your remarks relevant specifically to the definition of "student" rather than the setting of regulations.

Mr Dietsch: Unless we are finished with respect to questions on section 3, and I am prepared to move the motion to—

Mr Charlton: I guess my last comment on the issue, Mr Chairman, and I will abide by your ruling as a result of this comment, is that it seems to me that although you are right that the focus of my comments is on the opening paragraph of subsection 1a, it seems to me that the definition of "student" ultimately is going to be completed by the criteria that are established in the regulation. If it is not clear how that process is going to occur, and it is not to me, then I do not know what the definition means. Criteria are for a purpose and they limit a definition, or they perhaps expand the scope of the definition.

1610

The Chairman: Are there any further comments regarding clause 1(1)(xb)?

Miss Martel: I would like to return to Mr Clarke's definitions of "full-time" and "part-time" that he was in the process of explaining to me. I did get a definition of "full-time." It seems to me, though, that there were some other questions that I raised during the course of our discussion on Monday which I have not received answers to, so I want to continue in this section.

I posed the question of part-time because my concern was that we were limiting the definition of "student" solely to people pursuing full-time studies. If the purpose of the government's motion is to allow the board to set different earnings for the worker which more adequately related to the trade or the apprenticeship or the occupation that they were involved in, in order to give them a higher TT rate than normally would be the case, why would we not then also be looking at part-time students who may well be in the same boat but are not pursuing studies full-time?

I raised the question in particular, it seems to me, of a hairdressing course or a hairdressing school, for example, where that particular individual may not be in a program recognized by the Ministry of Education or under the Ontario student assistance program. If injured, that person probably would be paid at a lesser rate under the present wording than if he or she were actually fully occupied as a hairdresser.

So I have the two questions I want to raise with you. I do not know if a hairdressing course is a recognized program and I do not know that the

certificate that comes from that is recognized by the Minister of Education, but I think those people should be covered. I also think people pursuing part-time studies and doing the occupation that they intend to move into after their studies are completed also should be covered.

Hon Mr Sorbara: I just want to make a comment or two on that, and perhaps Mr Clarke will expand on it as well. My experience as Minister of Colleges and Universities reminds me that when people are involved in a program at a private or public institution for hairdressing, they are recognized as students who are in full-time studies. So the particular example would not apply.

The definition of "full-time student" is very expansive, particularly under the Private Vocational Schools Act. But the other issue of part-time students is one that I think has been raised by Miss Martel as well. There are a great number of part-time students around the province, and there is the individual who takes one course at a university or happens to be involved in a course at a community college one evening a week. Those are part-time studies.

The question arises, is the government's policy to bring that category of individual into this section as well? The answer is that the policy is not to bring that category of individual in because typically the individual who is in those circumstances is not sacrificing or deferring his or her ability to earn as a result of being a student.

Almost by definition, the individual who is a part-time student either is occupied in full-time employment or has chosen not to be in full-time employment. But the fact that that person is a student has not restricted, reduced or artificially constrained the ability to earn. Remember, what we are talking about is not an action that might happen while the individual is at school, but while the individual is earning. That is why we have settled on the use of the phrase "full-time student," and that is what the exception is attempting to do.

I am not sure if you want to add anything to that, Dick.

Mr Clarke: The only thing I would add to that is that when I was trying to answer Miss Martel's question with respect to part-time, I guess I did it too indirectly. In other words, what this does is, in the common way "full-time" is accepted, a full-time student includes someone who is part-time so long as that part-time person is participating in that course up to 60 per cent of the course. That is the commonly accepted cut point. As long as you are part-time but involved up to 60 per cent, then you would be considered a full-time student, and that is covered by this section.

If you have made that kind of commitment to your schooling so that you have withdrawn yourself from the workplace and are probably doing work outside of your regular employment, then you would be fully protected. That is what this is designed to do. To use the minister's example, if I were to take a couple of courses at night while continuing to work full-time, the board would still look to my regular salary for the earnings base for this.

Mr Charlton: I guess that is exactly what I was trying to raise earlier when I was talking about the criteria and how criteria and the changes that are going on in education alter the things we do in our lives. Just a couple of examples pop into my mind that do not fit in the same way as the person you have defined as a part-time person. You are defining that as somebody who is unprepared to give up full-time employment and is therefore taking evening courses and that is a part-time student.

On the other hand, you may have somebody who is now, under your definition, going to be categorized as a part-time student, somebody who went to university full-time for two years and then for financial reasons has taken a job in McDonald's and is continuing that full-time education on a part-time basis because he could no longer afford to continue on a full-time basis and is doing what he has to do to pursue what was originally a full-time education. Basically he finds himself in precisely the same situation as the 60 per cent student who is going to qualify under this section if he gets scalded by grease at the McDonald's or whatever the accident happens to be.

As we progress down this road of education, and the need for not only training but continuous retraining through people's lives, if we do not approach this question much more flexibly than we are trying to do by using old, fixed definitions, we are going to miss a lot of people and then this question of what happens in the criteria and what happens in the appeal process becomes even more important.

The Vice-Chairman: Does that clarify the matter?

Miss Martel: No, I do not think it does, because the examples that were being used by Mr Clarke and the minister were very specific, saying that we were dealing with people who, because they were going to school part-time, were not losing any earnings and therefore were not in the same category as someone who is a full-time student and giving up those earnings because he is going full-time.

Brian raised the example of someone who has had to leave full-time studies because of the cost and was working part-time and attending school part-time in order to make ends meet and continue on in that profession.

Let me raise with you the question of a single mother who, for whatever reason, may in fact be having to look after kids during the day but is taking courses at night in a recognized program which is going to get her, after however long it takes, a particular degree or certificate and at the same time is probably undergoing some type of on-the-job training in that regard. She does not have the luxury of going to school full-time and therefore losing earnings, as in the case that the minister and Mr Clarke have raised.

I really think that we have to take a look at part-time again because we are limiting it to a very specific group of people in the examples they have given us. I think what Brian and I are trying to point out is that there are going to be people in all kinds of different circumstances who cannot, for whatever reason, attend school full-time but are in the process of on-the-job training, working through a certificate program, getting through the courses. Should they get hurt, if they are doing that on-the-job training, they should be paid at a rate which is commensurate with a person doing that job full-time once they have completed that course.

1620

Hon Mr Sorbara: It is an interesting suggestion. The question that I would ask, once again, is whether the fact that that individual—that single mom who has decided to take a very restricted part-time program, one course a year—is taking that course artificially constrains her ability to earn. Remember, again, that we are not talking about what happens in school; we are talking about what happens in the workplace.

We are here with this section to ensure that someone whose earnings are



artificially constrained because of his student status is not arbitrarily provided with benefits that reflect only the earnings during that period. There are many of us who, having determined to take a course of study, look forward, if we ever complete that course of study and land a job as a result of that program, to earning much more than we earn today.

But the section that we are talking about, adding the definition "student" and the word "student" to learner and apprentice, simply brings in to the definition and the application of these sections all those whose current earnings at the time of the accident may be artificially constrained because of their student status.

Both the members of the NDP raise issues that, frankly, are not addressed by the bill and were never intended to be addressed by the bill. That is, if I decide that I want to change my life and get involved in a program of study and go from someone who can earn \$5 an hour to someone who can earn \$50 an hour, then I am going to take a course of study.

Consider the situation of a person who simply leaves work altogether and becomes a full-time student and is hurt outside the workplace. Well, again, this bill is not there to cover that. So we do not want to put the part-time student—

Mr Charlton: We are only talking about workplace accidents.

Hon Mr Sorbara: We do not want to put the part-time student in a better position than the full-time student. We just want to ensure that if your earnings are artificially constrained as a result of your student, learner or apprentice status, that will not affect the appropriate level of compensation that you ought to be paid as a result of an accident. I hear you on part-time students, but it is simply not within the context, not within the purpose, the substance, of this section.

Mr Charlton: Let us go back to the example that Miss Martel raised with the minister and let us look at the reality of what is happening in a case like the single parent, who is probably on mother's allowance so she is on social benefits with the government. An employer has agreed, because the Ministry of Community and Social Services is going to continue to pay the shot, to have this woman take a course to provide her with employment at the end of the course and to provide her with on-the-job training during the duration of that training period, both the schooling and on-the-job portions.

Now, that employer has agreed to do that training for the reason that somebody else is paying, in the same way as employers in the other kinds of cases you have cited agree to pay employees less because they are apprentices than what they will pay them when they are journeymen. It is a new—

Hon Mr Sorbara: No, I would not confuse those two examples.

Mr Charlton: It is exactly what I have been talking about. It is a new aspect of getting people trained that we have evolved in this society that did not exist 10 years ago. We have cases where the Workers' Compensation Board compensates people through contract arrangements with employers and the employers do not pay them. What you are saying, in effect, is that if the employer does not pay them, there is no pay and, therefore, they do not count; but it is employment none the less.

The single parent who is on family benefits who is doing on-the-job



training is in effect no different from the apprentice you referred to earlier in terms of both what society is trying to accomplish and what she as an individual is trying to accomplish. There is no difference, and if we are going to get hung up on fixing ourselves on old views and old definitions, then we are not going to be able to move into the future and move into it appropriately.

The Vice-Chairman: Do either of the members have a proposed amendment on the definition?

Miss Martel: Yes. We will move an amendment that has been drawn up by legislative counsel.

The Vice-Chairman: Miss Martel moves that clause 1(1)(xb) of the act, as set out in subsection 1(3) of the bill, be amended by inserting after the words "full-time" in the second line the words "or part-time."

The clerk will make copies. Will you be speaking to the amendment, Miss Martel?

Miss Martel: What we are trying to get at is our concern that the use of strictly full-time to define what a student is is going to restrict or limit or in fact work against those people who are in part-time studies but who are involved in an apprenticeship or training program and who, if hurt during the course of that employment, should in fact be making what they would earn if they occupied a full-time position in that particular trade, whatever it may be.

Having listened to what the ministry has said and its intent in this particular regard, and going through some of the sections Mr Clarke pointed out to us under section 20 and under the bill, what the intent is, I take it, is to allow students the same opportunity as is currently given to both apprentices and learners. That is to say, in the case of either of those two classes of people or workers, if they are hurt during the course of their apprenticeship, they will be paid at a rate higher than what they may be making at that particular time.

For example, if they are making minimum wage because they are not finished their apprenticeship, the employer has every intention of taking them on, they are pursuing their studies and will finish their studies at the same time as they finish the apprenticeship, if they are hurt during the course of their work related to obtaining that apprenticeship, then they should be paid a higher rate of pay and the board should have the ability to determine that rate of pay based on what someone in that particular employ would make if he were working full-time.

I fully support that position. My concern is that if we limit it strictly to full-time students, we are leaving out a large number of people, the examples of which Mr Charlton and I tried to raise here before the committee this afternoon.

You are not going to cut it by just looking at full-time students. A number of people, for whatever reason—and I do not think any of us can say it is because they do not want to go full-time—do not want to take the time to pursue formal education the whole day. You cannot judge what their particular economic condition or situation is at home. Many of them may be in the position that they have no alternative but to attend school on a part-time basis, because they may have other obligations at home and have to meet those obligations.

1630

But in the same way as those involved in a formal program, they are receiving training on the job. They are participating with the employer in an apprenticeship program, training on the job. They are being taught the skills they will need in order to graduate from that particular program.

Therefore, if they are hurt during the course of that apprenticeship, if they are hurt on the job with that employer, they deserve to have a higher rate of pay; that reflect is solely if they were earning minimum wage because they had not yet achieved that apprenticeship.

I would hate to think we would be cutting those people out, not recognizing the reason they cannot attend an institute or a school full-time. What we are suggesting is that we broaden the definition so that the board will be in the position of determining benefits and raising benefits, not only for those people who are attending school full-time and are on a training program but for those people who, for whatever reason, can only attend school part-time but indeed are going through a particular program and get hurt during the course of that program. They should be given the higher wages. I think it is an appropriate amendment and I would ask the backbenchers to support it.

The Vice-Chairman: Minister, do you have comments?

Hon Mr Sorbara: I understand where Miss Martel is coming from. If we could have a short adjournment, I could consult with officials and see if there might be an accommodation made rather than the motion put forward by Miss Martel. There is some other phraseology that might respond to the concerns she has raised.

The Vice-Chairman: Would five minutes be—

Mr Charlton: Could I just make one quick comment before we break, for the purposes of the minister? You stated a couple of circumstances which I think most of us agree would probably not deserve benefits in a student situation. Going back to our earlier discussion about criteria, is that not the place to clearly define the kind of situations you are going to cover and not cover?

Hon Mr Sorbara: Again, I do not want to get into a discussion of that section. We can get into that there. The issue that is before us right now is circumstances where, but for the phrase "full-time student," someone would fall into the principle underlying the bill. Again, I do not want to re-enter that discussion.

Mr Charlton: I do not want to either. I am suggesting that that is one way you can consider it, in terms of how you can handle clearly defining it at some point.

The Vice-Chairman: Would five minutes be enough?

Mr McGuigan: I want to raise just that point. Five minutes is often not enough to do these things. Would it be appropriate to say 20 minutes and ask people to remain close by so that if it is less than that we can proceed?

Hon Mr Sorbara: It may well be that you want to just move on and not take an adjournment at all.

The Vice-Chairman: The problem we have is that we cannot deal with some others, because they also deal with the student. It would be better to get the issue of the definition out of the way. Why do I not suggest that we adjourn until 1645?

The committee recessed at 1634.

1650

The Vice-Chairman: The committee will come to order. Do we have a proposal?

Mr Dietsch: Speaking to the motion that was put forward by Miss Martel, recognizing the points that were made and have been made earlier related to the inclusion of part-time and the concern with respect to a number of individuals who could or could not have certain implications by being part-time students in this section, I think it is important to note that there is also, as Mr Charlton pointed out before he left the room, obviously some concerns: for example, those individuals who may be taking part-time studies for general interest and nothing to do with improving their employment opportunities, such as the part-time student who takes tuba lessons or whatever. I think there is some concern.

Mr Charlton: Where the circumstances are not appropriate.

Mr Dietsch: Exactly. The other point is that we do not want to create a disincentive for employers who are going to hire part-time students either. We are willing to accept the motion as it is put forward, but recognize that there will be some areas we will have to work out when dealing with the regulations or the criteria that are under control. Assuming that is a clear understanding, which I assume by the nodding of the heads it is—

Mr Charlton: The record will show yes. That does not commit us to necessarily agreeing with everything the regulation says, but—

Mr Dietsch: Absolutely.

Mr Charlton: We agree that every educational circumstance is not going to be appropriate for coverage under this section.

The Vice-Chairman: Shall we put the amendment? All in favour of Miss Martel's motion? Carried unanimously.

Motion agreed to.

The Vice-Chairman: Are you now ready to put the question on subsection 1(3) in its entirety?

Miss Martel: May I speak to this? I recognize we have just had a small victory on the question of "full-time" and "part-time."

Mr Dietsch: I prefer to look at it as co-operation.

Miss Martel: You can look at it whatever way you want. That is up to you. However—

Mr McGuigan: A rose by any other name.

The Vice-Chairman: We are all learners in this process, students.

Miss Martel: There is something I should point out before we proceed any further. There is no doubt that we are happier with the definition of student as it appears under clause 1(1)(xb). The problem we have, though, at least on our side of it, is that we are not happy with the definitions of either "impairment" or "permanent impairment."

Members will recall that Mr Kormos and myself, who was in this committee last week, moved several amendments, four to be exact, in hopes of changing the definition of "impairment" to reflect what we hoped would be a broader definition of impairment that would take into account psychological damage arising from not only the abnormality or loss but the accident itself; to take into account that both conditions, that is, physical or functional abnormality and disfigurement, and psychological damage, did not have to be present in order to have the definition of impairment met.

There has been quite a discussion concerning that particular definition alone. In all of those cases, of course, our amendments were voted down. There was a lively discussion that I am sure precipitated each of those.

What I want to place on the record today is that although we have had an agreement on "student" and changed that to broaden the definition to include part-time students in the cases where that merits, we cannot at all accept the definitions, particularly of "impairment," that are also in that section, so we will be voting against the entire section. I just wanted to make that clear.

The Vice-Chairman: Are you ready for the question? No?

Miss Martel: Twenty minutes, please.

The Vice-Chairman: All right, 20 minutes, so we will be voting at 1715.

The committee recessed at 1656.

1716

The Vice-Chairman: The committee will come to order, please. I will put the question on subsection 1(3), as amended, in its entirety.

Miss Martel: Can we have a recorded vote, please, Mr Chairman?

The Vice-Chairman: Certainly.

The committee divided on subsection 1(3), as amended, which was agreed to on the following vote:

#### Ayes

Brown, Dietsch, Lipsett, McGuigan, Stoner, Tatham.

#### Nays

Charlton, Martel, Wiseman.

Ayes 6; nays 3.

The Vice-Chairman: Could we move to subsection 1(4)? Are there any comments on subsection 1(4) on page 2 of Bill 162? No comments? Are you ready for the question?



Miss Martel: Agreed.

The Vice-Chairman: All those in favour? Those opposed?

Interjection: Put your hand up.

Interjection: Are you not opposed?

The Vice-Chairman: The subsection 1(4) carries.

I must say, as I understand it, there is no section in the rules that allows for abstentions.

Clerk of the Committee: No abstention, no.

Miss Martel: That is right.

Interjection: There is no recorded vote.

Miss Martel: Come on, you guys; you know the rules by now.

Mr Charlton: It is the same as if you were in the House.

The Vice-Chairman: It is a voice vote.

Interjection: That is right.

Mr Charlton: There is no call for a recorded vote. It is the same as a voice vote in the House.

The Vice-Chairman: It is carried.

Shall section 1, as amended, carry?

Miss Martel: Why are we agreeing on all of section 1 again when we voted for each part?

The Vice-Chairman: No, no. We have voted on each subsection. Now we have to vote on the section in its entirety.

All those in favour?

Miss Martel: A recorded vote, please.

The Vice-Chairman: You want a recorded vote. All right.

The committee divided on section 1 of the bill, which was agreed to on the following vote:

Ayes

Brown, Dietsch, Lipsett, McGuigan, Stoner, Tatham.

Nays

Charlton, Martel, Wiseman.

Ayes 6; nays 3.

Section 1, as amended, agreed to.

1720

Section 2:

Miss Martel: I want to deal with the question of impairment as it relates to this section of the bill. I am looking at the current act, for anyone who has the red book, page 16 of the current act, which deals with the section on serious and wilful misconduct.

What the amendment does here is take out the word "disability," which appears under the current act, where it says, "Where an injury is attributable solely to the serious and wilful misconduct of the worker, no benefits or compensation are payable unless the injury results in death or serious disability."

The Vice-Chairman: What section of the act are you referring to?

Miss Martel: It is page 16, subsection 3(7). I take it what the government proposes to do is to take out not "serious" but "disability"—or maybe both, I am not sure—and replace it with the question of "impairment."

The question that I want to bring to the attention of Mr Clarke in particular is how some problems may arise when we take out that narrow definition of disability that is in the current act and replace it with "impairment," how that may work very well and logically in some sections but in other sections of the act may cause some problems when we try to put new terminology into old legislation, and how that might appear to be awkward.

What I want to bring to your attention is that in this particular section we are dealing with those injuries that occur on the job because of the serious and wilful misconduct of the worker. It is different from the definition of "accident" that occurs at the beginning of the act, where you are looking at a chance event that is occasioned by a natural cause, and the other definition of a wilful and intentional act, not that of the worker, or the case of disablement.

This particular section looks at areas where the worker, because he may have broken a company safety rule, in many cases ends up injuring himself extremely seriously or to the point of death. I take it that the practice the Workers' Compensation Board has operated in the past has been that serious disability was something that resulted in six weeks or more lost time in those cases.

Under the definition of "impairment," we could have a worker off for more than six weeks or for six weeks and longer, but the accident may not have been serious; it may be a relatively minor—I will use the word—impairment, which we are going to replace in this particular section.

What I am wondering is, is a back strain or a strain or a sprain that would allow the worker to be off more than six weeks still in this section considered "serious" for the purposes of compensation under this particular section? At present, the board would look at that as a wilful act of the employee, who perhaps broke a company rule, but he would be off because of an extremely serious injury more than six weeks.

Under our definition of "impairment" that has been voted on in here, is

the application still the same? Will it still be considered to be a serious—I hate to use the word "impairment" again—accident that resulted in serious injuries?

Mr Clarke: I really think the answer is that this will not result in any difference in the way the board handles it. Our problem, and the reason for the change, was that if left the way it was worded, referring to "disability," and given the way we define "disability" in the bill, it would have only entitled the worker in that kind of a situation to the earnings loss award.

But, as Ms Martel has pointed out, there could very well be a situation where a worker suffers a physical impairment and should be entitled to a non-economic award. That is why we are changing it, so that we can make it clear that in the circumstances where the worker is warranted compensation, he will be entitled to the non-economic compensation as well as potentially the earnings loss. If we had left it the way it was, he would not have been entitled to the non-economic loss for impairment.

Mrs Sullivan: I wanted to bring to the attention of the committee the reason this entire section is included in the original act and why it is continuing in this act. This may additionally help Miss Martel with her question.

When workers' compensation was set up, as you know, it was basically set up as a no-fault system. To underline the no-fault, it was important to spell out in the act that the origin of the fault is not taken into account; that if the worker causes the accident, he is equally entitled to benefits, as he would be entitled to the benefits if the accident were caused through other circumstances.

The change from the word "disability" to "impairment" means there will be consistency in the application of the old concept of no-fault to compensation for the physical loss that the worker suffers, even if the injury is caused by his own action, whether it is a breach of safety rules or a lack of wearing a safety helmet or whatever.

It is the physical loss that is now the criterion for compensation and the intent is that the physical loss would continue to be the criterion for compensation.

Mr Dietsch: I thought I heard Mr Clarke clarify this point, but I just want to make sure. Is my understanding correct that by changing the word "disability" over to "impairment," first of all, it runs current with the way that we have made the changes in the act? Second, the point that I am more concerned with is, does it change any of the interpretation of that clause? I thought I heard you answer that at the first, but I have to ask the members when they are making their points if they could speak up a little bit for me; I have difficulty hearing. Maybe Mr Clarke would clarify that for me.

The Vice-Chairman: Is it compensable?

Mr Dietsch: I think it is, but we have not worked out that detail, yet. Would you be interested in handling my case? I cannot talk about that right now.

Mr Clarke: I do not think it will result in a change in the way in which this section is applied. As I said, our concern was that, given that we

have gone to the dual award system, we want to make sure that we have not ruled out the question potential entitlement under either section of the dual award system.

Miss Martel: I take it that the key word in that phrase would probably be "serious" and not so much "impairment." My concern is that the impairment is not going to lessen in any way, shape or form the degree or nature of the injury, which then may result in benefits not being awarded. So, providing that "serious" is going to appear, okay.

Mr Clarke: We have split out what was together before.

Miss Martel: Okay. I might as well put it on the record now, too: the problem we go back to is our concern about the definition of "impairment" as well, and what that did or did not entail. We will probably be voting against that as well, or any other section in which "impairment" appears.

The Vice-Chairman: Are you ready for the question? Do you need time?

Miss Martel: Twenty minutes, please.

The Vice-Chairman: Twenty minutes. Okay. There is a vote in the House at 5:50 pm, so I suggest that we vote on this section immediately when we commence tomorrow afternoon, after routine proceedings.

The committee adjourned at 1730.





WON  
CIB  
578

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT, 1989

THURSDAY 29 JUNE 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Pouliot, Gilles (Lake Nipigon NDP) for Mr Laughren

Sullivan, Barbara (Halton Centre L) for Mr McGuigan

Clerk: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

Witness:

From the Ministry of Labour:

Clarke, Richard, Manager, Policy Branch, Labour Policy and Programs

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 29 June 1989

The committee met at 1535 in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

The Vice-Chairman: We will continue our clause-by-clause consideration of Bill 162, An Act to amend the Workers' Compensation Act. On section 2, we have to put the question. Are you ready for the question?

Miss Martel: A recorded vote, please.

The Vice-Chairman: A recorded vote; all right.

The committee divided on whether section 2 should stand as part of the bill, which was agreed to on the following vote:

Ayes

Brown, Dietsch, Lipsett, Tatham, Stoner, Sullivan

Nays

Martel, Pouliot.

Ayes 6; nays 2.

Section 2 agreed to.

Section 3:

The Vice-Chairman: Mr Dietsch has an amendment we had introduced last time, but because we dispensed with the reading it was not recorded in Hansard. I would ask now if we could read it into the record.

Mr Brown: Is this part of the literacy program?

Mr Dietsch: This is part of the reading program. There is some exemption to the age classification which I had stated in the House is four to eight years old and I think it is a bit different here.

The Vice-Chairman: Mr Dietsch moves section 3 of the bill be struck out and the following substituted therefor:

"3. The said act is amended by adding thereto the following sections:

"5a(1) An employer, throughout the first year after an injury to a worker, shall make contributions for employment benefits in respect of the worker when the worker is absent from work because of the injury.



"(2) Contributions under this section are required only if,

"(a) the employer was making contributions for employment benefits in respect of the worker when the injury occurred; and

"(b) the worker continues to pay the worker's contributions, if any, for the employment benefits while absent from work.

"(3) If the board makes a finding that an employer has not complied with its obligations under this section, the board may levy a penalty on the employer to a maximum of the amount of one year's contributions for employment benefits in respect of the worker.

"(4) The employer is liable to a worker for any loss the worker suffers as a result of the employer's failure to make the contributions required by this section.

"(5) For the purpose of determining a worker's entitlement to benefits under a benefit plan, fund or arrangement, a worker shall be deemed to continue to be employed for one year after the date the injury occurred by the employer of the worker on the date of the injury.

"(6) If a worker is injured while engaged in employment described in subsection 1(2) or (4), the worker's employer, other than the employer described in subsection 1(2) or (4), shall be deemed to be the employer for the purposes of this section.

"(7) If an employer makes contributions under this section in respect of a worker described in subsection (6), the employer described in subsection 1(2) or (4) shall reimburse the employer for the contributions.

"(8) This section does not apply to employers in respect of multi-employer benefit plans.

1540

"5b(1) If, at the time of an injury, a worker was entitled to benefits from a multi-employer benefit plan, the trustees of the plan shall continue to provide the worker with the benefits throughout the first year after the injury when the worker is absent from work because of the injury.

"(2) The trustees of a multi-benefit plan are liable to a worker for any loss the worker suffers as a result of the trustee's failure to comply with subsection (1)."

Mr Dietsch: I know everyone listened very carefully to that motion. They are probably ready for the vote.

The Vice-Chairman: Did you want to speak to this, or did Mrs Sullivan want to speak to the reason for the amendment?

Mrs Sullivan: We have discussed some of the rationale for the amendment. I wonder if we could stand this section down until we hear from Koskie and Minsky.

Mr Pouliot: Are we not supposed to deal with it in order? Was that not the original agreement, I am advised? I am sorry.

The Vice-Chairman: What do you mean in order?

Mrs Sullivan: Just 5b.

The Vice-Chairman: Section 5a we can deal with. I think we have to stand down 5b though. That would be in order.

Mr Pouliot: I am just wondering if it is too early to search for our Conservative colleagues.

Mr Dietsch: For the ease of the continuum of work that has to be done by the committee, which I am sure all members would be interested in, by the time we go through each area and get down to 5b—we are certainly willing to stand down section 5b once we get that far.

The Vice-Chairman: Right, but we can deal with 5a. Sorry, I interrupted you.

Mrs Sullivan: We have had a discussion of the beginning sections of section 3. As you recall, the amendment obliges an employer to continue employment benefits for the year of absence following an occupational injury and provides for penalties to the employer who does not maintain those contributions. Additionally, there is a civil liability responsibility for any loss the worker can suffer through the failure of the employer to make such contributions.

The last time we discussed this, and I cannot recall if it was Monday, we walked through the time lines on the section relating to the maintenance of the employment benefits from the period of time of injury while the worker is receiving temporary benefits and the change that would occur at the conclusion of that one-year period. I do not think we have to re-cover that territory.

Miss Martel: The amendment we just finished dealing with, as I take it, because we were going through something else, was that not the amendment that had previously not been read into the record? We are not supposed to be dealing with that until we get to it anyway, right? Was that not the agreement we made on Monday?

The Vice-Chairman: We are at it now.

Miss Martel: No, I am talking about subsections 6 and 7, which were new.

The Vice-Chairman: No, he read the whole thing.

Miss Martel: Oh, okay. All right. We are ready to deal with it. I have a question.

The Vice-Chairman: He read the whole thing, but the last part we have to stand down because we are awaiting the submission.

Miss Martel: Let me deal first of all with the question of eligibility, subsection 2. My understanding of the whole point of this whole section—

The Vice-Chairman: Excuse me. The bells are ringing. Find out what that is.

Miss Martel: ---was to ensure that an employer in fact would be making contributions concerning health care benefits.

The Vice-Chairman: Excuse me. Could you close the door there, please. Okay; go ahead.

Miss Martel: My understanding of the purpose or the intent of the government with this whole section was to ensure for the first time that employers would pick up, for the first year an injured worker was off, all those contributions concerning health care, life insurance, etc. I remember Mrs Sullivan had said this would be a great benefit, in particular for some 70 per cent of the workforce who are now not unionized and therefore would not benefit from any of this under a present collective agreement.

Given that premise, when I look at the section on eligibility, I want to ask some questions concerning just whom this is going to apply to and whom it will not apply to. My understanding was that it would apply to all injured workers who were hurt on the job and who were off for a year. The employer would continue to pay those whether they had that under a collective agreement and were already covered or whether they were nonunionized workers and this was a new benefit.

As I read the section on eligibility, under subsection 5a(2), my understanding is that particular contribution will only be made on behalf of the worker if (a) the employer was making contributions at the time the worker was hurt and (b) if the worker himself then continues to pay for his portion of the benefits during the time he is off work. I am wondering if my reading of that is correct.

Mrs Sullivan: That is correct and it is spelled out quite clearly in subsection 5a(2).

Miss Martel: Why is it then that we are not covering all workers if that indeed was the intent of the government? It seems to me that (a) many nonunionized workers in particular would not be paying any type of contribution in this manner at all to their employer, and (b) we are cutting out all those people where the employer was not making those contributions in the first place. Surely that would be a great percentage of the workforce as well.

Mrs Sullivan: I think if you read clause 5a(2)(b) you will note the words "if any." In some cases, if the employer is making 100 per cent of the contributions for the employment benefits, the worker will not be required to pay worker's contributions. The words "if any" are apparent.

Miss Martel: What about in the first case; that is, if the employer is making contributions at the time the injury occurs? What about all those people where the employer was not making those contributions in the first place?

Mrs Sullivan: They would not be included in this section.

Miss Martel: Does the ministry have any idea how many workers that may include? It would seem to me, and I am just guessing at this, that in many nonorganized workplaces those types of benefits would not be covered by the employer.

Mr. Clarke: The purpose of section 5a either in its original form in Bill 162 or in this amendment is essentially the same. Subsections 5a(1) and (2) are just crafted a little differently than subsection 1 was in the original Bill 162. They have exactly the same effect.

The intent was that in those places of employment where an employer does provide benefits, this would require the employer to maintain those benefits. If the employer does not provide any such benefits, there is nothing to maintain. Quite frankly, I do not know what the breakdown is between places of employment that offer benefits and those that do not.

To go back to our discussion earlier this week with respect to the current act and the definition of wages and salaries, "'earnings' and 'wages' include any remuneration capable of being estimated in terms of money."

Let me just use a simple example of what we are trying to do here. If at your place of employment you have a group life insurance plan, then what the act says as it is currently written is that in calculating the earnings for the worker at the time of the injury, you are to include in that remuneration those things capable of being estimated in terms of money. That is supposed to mean the employer's contributions to that worker's participation in the group life insurance plan.

#### 1550

When the worker is injured and is off work, while this required the employer to report that amount of cost to the board so that could be built as part of the base for wages and salaries for determining the compensation to the worker, it did nothing to guarantee the worker his life insurance or his family's life insurance. As soon as the payments into the group life plan discontinued, and they were payments made by the employer and the arrangement was between the employer and the group life carrier, this person would be out of protection.

What we are trying to do in section 5a is to say that statutorily that protection has to be continued for a year after the injury, and that where the employer is making contributions, then the employer will continue this. What we are saying in clause (b) is that there are all kinds of arrangements out there. There are some where the employer pays the full shot. There are others where the workers pay the full shot. There are others where they share. What we are trying to do is simply to require the employer to pay his share, so if the worker does not pay his share, you have to have both halves if it is a split. If it is 50-50, you have to have both halves going in.

Mr. Pouliot: If the worker does not have to pay his share?

Mr. Clarke: Yes. If the worker does not pay his share, then the program is not going to be continued; the protection is not going to be able to be continued. All we have done in the statute is to say to the employer, "You have to continue what you were doing in the past." If he was paying \$5 a month into this plan and the worker was paying \$5 a month into this plan, what section 5a of the act under section 3 of the bill says is that the employer shall continue to pay his \$5. However, if the worker is obliged under their arrangement to pay \$5 as well and chooses not to, then there is no point and there is no obligation on the employer to continue his \$5.



I hope that helps to explain what we are doing. If it does not, I will try to answer any subsequent questions.

Mr Pouliot: I have a few supplementaries, if I may. It is my first time here, so I would certainly appreciate it. I have very little knowledge of workers' compensation, although I have been reading about the attempt to amend what is already a bad benefit. From what I am told by unbiased people, people without prejudice, it makes the bill worse anyway.

Under section 3, eligibility, I am quoting clause 2(a), "the employer was making contributions for employment benefits in respect of the worker when the injury occurred."

For instance, again, if I have a pension plan with my employer and we share whatever ratio, I will be required to make a contribution in order to keep the plan alive, will I not?

Mr Clarke: As a worker?

Mr Pouliot: Yes.

Mr Clarke: You do not have to. You can if you want to.

Mr Pouliot: If I choose not to.

Mr Clarke: If you choose not to, then you can choose not to. What it means is that the employer is not required to make his share either if you are not making your contribution.

Mr Pouliot: In a worst case scenario, I am a worker and I pretty well go from hand to mouth; you know the circumstances out there. If I belong to a plan whereby I pay 30 per cent and the rest in deferred wages, but for the time being being it is picked up by the employer, called the employer's contribution, and I cannot afford in this case to pay the 30 per cent, would I lose 100 per cent of my benefit?

Mr Clarke: That is right.

Mr Pouliot: If we go back to section 5a on the amendment, it says, "throughout the first year after an injury." From your experience, if I am a worker who has been injured on the job, am I liable to be in a worse state financially in the second year of an injury or in the first year?

Mr Clarke: It would clearly depend on the circumstances.

Mr Pouliot: With respect, it does not clearly depend on the circumstances. The thing is that you cannot say what I am going to say because obviously, if I get a broken back and I work at ABC factory, it is very likely that my financial circumstances will be worse in the second year of my condition than in the first year; right?

Mr Clarke: I am sorry, but—

Mr Pouliot: Okay. I will try again. I will say anything to keep a job here.

What I am concerned about is that they threw out "the first year after an injury to a worker." The coverage is not sufficient. I may have some

unfortunate circumstances. If I am badly injured, one year can go by rather quickly. In the second year, I am again less fortunate and I cannot make my contribution to the employer.

In other words, I could have been working for an employer for 25 years; I can go the first year making my contributions so that I belong to those plans, supplementary medical, pension, etc. But in the second year, because I am getting less money as an injured worker than in the first year, I am stretched to the limit. I cannot make my contributions to keep those plans alive, and there is no provision here saying that I will get any coverage. I stand to lose my coverage in the second year.

Mrs Sullivan: I will speak to this first, and then maybe Mr Clarke will be able to help as well. Under subsection 45a(6), at the end of the first year, the determination of the wage-loss compensation is made, and that is the point when the temporary benefits cease.

If under the one circumstance—and we discussed this quite thoroughly last Monday. Where it is impossible to make that wage-loss determination at that time, the worker's temporary benefits would be increased by the value of the benefits coverage. I do not know whether this helps you, because you were absent from the discussion on Monday, but I think it is important to recognize that the end of that first year is the time that is statutorily required for the determination of the wage loss.

Mr Clarke: I want to clarify something I said in an attempt to answer this question a minute ago. If, to use the case where the worker chooses not to or is unable to, or however you wish to express that, he does not make his contribution to his pension plan or the health and welfare plan or the life insurance plan, and thus the employer is not obliged to do so either—this is where we get into complications—then going backwards to earnings and wages, with the amendment that the committee passed yesterday after a debate some days ago, where we say that earnings and wages include any remuneration capable of being estimated in terms of money but do not include contributions under section 45a for employment benefits—this is complicated, I am sorry.

What that would mean is that because the employer is not required to make a contribution under section 5a, the value of his contribution has to be included in the value of earnings and wages that is used to determine the compensation that the board is paying. You would not, in that case, get benefit protection, but you would get the value of the contribution reflected in his compensation from the board.

Mr Pouliot: I appreciate, with high respect, of course, that if an injured worker cannot read what you have just said to me—if he reads it three times and cannot understand, it is not his or her fault; it is the fault of the people who drafted this. This was cast in hell, in terms of comprehension.

What I am asking again is, why do we not have, under section 5a—and I am quoting from the amendment from the government—instead of "an employer, throughout the first year after an injury," "an employer throughout the period after an injury," while it has been catalogued or documented that the person is still under the Workers' Compensation Board, is still an injured worker. It really amazes me that it says "the first year," because it runs contradictory to the intent and the spirit of the amendment which is to give protection to

employees. What I am saying is that the likelihood of being in dire need in the second year is more likely than even the first year.

It is not a very costly thing. You are not going to put employers under a state of siege. What you are doing is recognizing the reality of people needing those benefits. You know, eliminate the words "first year." You need no time stipulation or, at the very least, a much longer time than one year. You are putting people into a straitjacket here.

1600

Mrs Sullivan: I think it is necessary to understand that this is a new protection for workers and the determination of the time line here was based on the determination of the wage loss, which is the one-year period that concludes with the change from temporary benefits to the determination of the wage loss under section 45a.

Mr Pouliot: I do not want to prolong this, but it is so important for people who are injured in the workplace. It is really all they have. We are not there where we have a guaranteed income like some people with social consciences have been advocating for decades. This is all the people have here. I am trying to be consistent and reasonable.

Mrs Sullivan, bear with me. I say that in the case of a major injury, all the programs, before someone gets assessed for a pension and so on, you can go anywhere, let's say, from two to three years—I am sure there are exceptions—and then after that you will pension someone off if you wish. You will assess them. They will be given a degree of invalidity and then they will be assessed a certain pension.

What is the difference between—that is consistent and reasonable under its present form and is not likely to change significantly under your proposed amendment, but what is not consistent and reasonable is the parallel that you wish to give with the one-year stipulation—what has changed between the first and the second year?

I am still fully temporarily disabled, if you wish. I get full compensation benefits. I am deemed to be able to return to work at one time. There is no change in my condition. There is no change in the spirit or intent, no breach between the end of the first year and the period before I get assessed for a pension that I will be able to return to work.

Mrs Sullivan: I think that Mr Pouliot is not understanding the time lines that the bill provides for, which are significantly different from current practice. At the end of one year after the injury, the worker having had the temporary disability will be entitled to compensation for future loss of earnings at that point in time.

Additionally, after medical rehabilitation, a determination will be made relating to the worker's compensation for the noneconomic loss. I think that this bill requires determinations to be made under section 45a and section 45b, and section 45b also provides additional benefits of 10 per cent for the loss of retirement income. I think if you were more familiar with the provisions of the bill relating to the statutory requirements for compensation and for the determination of the compensation, you might feel more satisfied on these issues.

Mr Pouliot: I have one supplementary which I think has some relevancy. I agree that you—I should not say I agree.

Mrs Sullivan: Certainly you should. Feel free.

Mr Pouliot: It is really ironic, and please do not misunderstand or misquote my intent, if possible, but surely good wages and good benefits go together, by and large. If you have labour with a good bargaining agent getting commendable wages, the benefit package will be commendable as well.

Mr Dietsch: I do not know whether that is entirely true all the time.

Mr Pouliot: No, but I said by and large. People who are working for an employer who has the ability to pay recognize that fact. If you get \$20 an hour working in a paper mill, your benefits are very good. If you get \$5 an hour working under minimum wage, your benefits are nonexistent or very, very sporadic, if any, at the beginning. It is not like picking grapes or oranges.

The Vice-Chairman: Or sawing logs or teaching kids.

Mr Pouliot: What I find again—and there could have been some amendment, some social responsibilities here—is that it is the less fortunate. On the one hand, for a short period—one year, mind you—there is an opportunity for workers to partake, to keep their benefits alive, if you wish, in good standing. Ironically, we are saying here, "Well, if you don't have any benefits, you don't lose anything."

Often legislation is like this. It really does not make that much sense, but then they will have the counterargument saying that you should be paid for being injured or you would end up being paid, if you want, for being injured.

Tell me something: In terms of unemployment insurance, what does the legislation say, broadly summarized? If I'm injured on the job, what happens to my UIC payment, Mr Clarke or Madam Sullivan?

The Vice-Chairman: Excuse me. Sorry, Mr Pouliot. Did you have a matter you wanted to raise, Mr Dietsch?

Mr Dietsch: I am trying to be patient and understanding. By the member's own admission, he recognizes that he perhaps does not understand the act as well as he would like to.

Miss Martel: He is not the only one.

Mr Dietsch: However, I think it is a case of relating it to the section in the act that we are dealing with. UIC—what are we talking about?

The Vice-Chairman: It may be helpful, Mr Pouliot, if you refer to subsection 1(2) of the bill, which defines—

Mr Dietsch: Eligibility.

The Vice-Chairman: No, it defines wages. It says "but does not include contributions...for employment benefits." If the committee will indulge the chairman for a moment, it seems to me that the argument you are making is that benefits are deferred wages. That is certainly an argument that



you can make, but in terms of this act, the definition under subsection 1(2) affects that.

Mr Pouliot: But there are weeks of qualifications. There is the Canada pension plan and so on.

Mr Chairman, please—I appreciate the great deal of virtuous patience, the quality of patience by my colleagues—points of order will only stop the expediency to deal with these quickly, and this is what I am trying to do.

Mr Dietsch: Not at all. I think if a point of order is required that keeps you on track and keeps you from straying into verbal diarrhoea, then that is what we have to try to do.

The Vice-Chairman: Order. I hope that you will withdraw the last—

1610

Mr Pouliot: I am not familiar with those terms, sir, but I know they are not nice.

It is just that—there is a focus here—those benefits constitute very important components. When I am asking, someone should be able to tell me, "This is what happens when you get hurt on the job by law, by statute, your unemployment insurance and this." We can take that out of the way, because we are aware of what constitutes a requirement to get UIC in the future; I will not get it while I am on workers' compensation benefits.

But if I do not satisfy the number of weeks over the last period of time, I am disqualified, and there is a share arrangement there. What happens to the Canada pension plan, because those are contributions?

The Vice-Chairman: Mr Pouliot, I think Mr Clarke might answer. I do not think that UIC really applies; but the other question is in terms of pension benefits or health packages or life insurance or dental benefits. Those kinds of things are really what apply to the section 3 amendment that we are dealing with.

Mr Clarke: With respect to UIC and CPP payments, because workers' compensation benefits are not considered wages, they are not taxed for income tax purposes. They are also not considered to be wages by federal law for the purposes of contributions to the Canada pension plan or unemployment insurance.

Mr Pouliot: Okay. Now I know and I thank you, Mr Clarke. I have no more supplementaries on this particular item, Mr Chairman, but I will have some more as time progresses.

Miss Martel: In terms of that particular section, let me outline my concern for a worker who is not in a position to continue that payment of his benefits. I know Mr Clarke was referring to it when he was answering Mr Pouliot, but I want to go through it again because I have written down what the definition of "earnings" and "wages" is, and I cannot see yet how, if a worker cannot pay his share, this will be picked up automatically and put into his TT rate.

Let me go back and outline my particular concern. During the course of the hearings, we all heard people who had talked about the large drop, in many cases, in wages or salaries that people experience when they are on workers'

compensation. My concern is that we may be in the case where we have an employer and an employee who will contribute equally or who each contribute a particular portion towards health care benefits, life insurance, pension benefits, etc, whether it be 50-50 or 60-40, etc.

It seems to me that the contributions made by the employer will only continue if in fact the worker is able on his part to continue to pick up whatever share he had originally been paying, whatever share he contributes to the whole package.

My concern is that if you have a worker who is already experiencing a dramatic loss in wages or salary because of the fact that he is now on compensation and has had his benefits reduced and he is living from hand to mouth, that worker may not be in the position of being able in any way, shape or form to continue to contribute his share. So, in fact, the moment he stops paying whatever percentage he would have paid into that plan before, so too does the employer and so does his protection end.

What I would like to know is why we cannot amend that whole section so that we would effectively say that if a worker is not in a position of paying the portion he normally would have paid had he been at work, the employer will pick up the whole portion for the remainder of the time the worker cannot pay his share, and when the worker returns to work, he then reimburses the employer for the portion the employer had picked up while he was off work and could not pay those benefits.

Mr Clarke: I guess I can respond to some of that, Miss Martel. Again, it is difficult. I am trying to explain that the whole bill taken together is a piece of legislation. One of the things that Bill 162 contains is an increase in the earnings coverage ceiling, which increases the earnings that are covered from approximately 140 per cent or 145 per cent of the average industrial wage currently, which we know is \$36,600, to—by the time it is finished and, of course, it will depend upon when the bill becomes law—175 per cent of the average industrial wage, which will be somewhere in the mid to upper \$40,000 range.

What that will mean for a lot of workers is that currently, the definition in the act notwithstanding, workers had reached that ceiling before their fringe benefits were taken into account. So we have an increasing of the ceiling and more of them will be covered. That is one thing.

Second, remember that when a worker is off on full temporary compensation during this first year he is entitled to 90 per cent of his after-tax income. Depending at what point in the year that injury occurs, at the end of the year that will have an impact on his actual after-tax income. It very well can be considerably higher than 90 per cent; it can be more than 100 per cent. I will put it another way; that is not quite correct. Let me try it again.

Your money in your pocket will be more than it would have been but for the injury because, during the first part of the year, you are being taxed at a rate that presumes you are continuing earning at that rate. In fact, in essence the worker has more money and more disposable income than he had without the injury. The degree of that will depend at what point in the year the injury occurs, how much he is earning and all of those kinds of things.

Miss Martel: Let me stop you right there. When we had the construction industry before us, it had slides trying to prove that that

indeed would be the case. My concern is that for most injured workers, in order to get to 90 per cent of their net, we have deducted the probable income tax, Canada pension plan contributions and unemployment insurance contributions they would have paid had it not been for the injury. So to some extent we are taking that into consideration when we set their rate.

Mr Clarke: One of the reasons I corrected myself as I was stating it was that there is a difference between what your income tax is and what your actual disposable income is. The effect really is that, because workers' compensation income is not taxable and depending again—to restate myself—on where in the year the injury occurs, your actual tax rate will come down, but you are paying your appropriate amount of tax. I am not trying to suggest anything other than that. I am just saying you actually can or may have more disposable income.

At any rate, you have 90 per cent of net and the ceiling has gone up. We have done that. I mean, that is what the bill does do in sort of its totality. I do not think I can answer any more than that.

Mr Pouliot: One quick supplementary about really the same thing. Under the present system of workers' compensation I will get 75 per cent.

Miss Martel: It depends on when you were hurt. If you were hurt before 1985, you get 75 per cent of gross.

Mr Pouliot: Okay, I will get 75 per cent of gross. What about after 1985?

Miss Martel: You get 90 per cent of the net.

Mr Pouliot: Okay, it is 90 per cent of the net, so I would assume that in terms of the pay envelope I would take 15 cents on the dollar more. How are we doing? Okay?

Mr Clarke: No, no. Sorry to interrupt.

Mr Pouliot: I have \$100 here and 75 per cent is not taxable. Now you are giving me 90 per cent that is not taxable; 90 less 75 is 15. No?

1620

Mr Dietsch: That is 75 per cent of gross.

Mr Clarke: No. It was replaced in 1985. Instead of paying compensation based on 75 per cent of gross, the switch was made to pay it on 90 per cent of the worker's net income.

To use your example, if you had \$100 in your pay packet—all the deductions have come off; you have \$100—then compensation would pay you \$90, theoretically. Okay? But in fact, that \$90 should be based on not only the \$100 you have in your pocket, but the cost of the employer's contributions to those fringe benefits. So it would be \$93 or \$94 or whatever it is.

Mr Pouliot: I work in a paper mill in Lake Nipigon. There are 2,080 work-hours in a work-year, 52 times 40. I make \$20 an hour. I make \$800 a week. I break a leg. Under the old system, I am off for six months; under the present system, I am off for six months. How much have I got left? Give me a ballpark figure. Am I better off to break my leg now than I was before 1985?

Mr Clarke: It is never a good idea to break your leg.

Mr Dietsch: There would be those who may break other parts, but what has that got to do with this?

Mr Clarke: It would depend upon how many deductions you have, right?

Mr Pouliot: Yes.

Mr Clarke: We have had a lot of tax changes since 1985. Quite frankly, it would take a mathematician and a tax accountant to figure it out.

Mr Pouliot: It is very important to the people who have asked me to sit here today. They say: "Gilles, we work in the riding of Lake Nipigon. Your mandate—we pay your wages—is to go and represent our own scenario, our case. What does it mean to us?"

Mr Dietsch: Mr Chairman, on a point of order: I appreciate what the member has just said. Likewise, many of us who sit around this table have the same cause and the same ultimate goal in mind: to be able to address those concerns. However, we are talking about going through this act in areas in dealing with the bill and we are talking about benefits. The member's question, perhaps, would be more suitable under another area of the bill, but it certainly is not relevant here.

Miss Martel: I would like to speak to the point of order. Picking up from what Mr Clarke said, which was the question of ceilings, it was Mr Clarke who said that many workers would be better off under this, once Bill 162 was passed, because of the increased ceilings, stating from that, of course, that many of them would be able to pay their health care benefits or their share because they would be making more money.

Gilles's point was that if I worked in a paper mill, I would be making far beyond even the ceilings included under new Bill 162. Under the new bill, the paper mill worker would still be making far in excess of even the new ceilings put into this act. He still gets into the position that his take-home pay is so much less than what he was used to before he was hurt that he may not be in a position to pay his health care benefits. That is why Gilles was getting around to the point to try to figure out whether the guy is going to be better off or not.

We heard, even during the course of the hearings, that, in fact, many workers, even with the new ceilings in place, were still going to be making far less and would not have their take-home pay covered.

The Acting Chairman (Mr Brown): Are there any other members on the point of order? I think, Mr Pouliot, you should restrict your comments to the sections in front of us. We have not come to the section dealing with the increase in ceilings yet. Perhaps it would be more appropriate for you to speak to it then.

Miss Martel: We will talk about the increase in ceilings next time.

Mr Pouliot: Mr. Chairman, I agree, but you may realize that because of the importance of what is being debated and also because of the human dimension, we bring forth real people here with real problems.

The Acting Chairman: I understand.



Mr Pouliot: Sometimes, if we deviate from the order of the day, it is done with good intent and with the welfare of other people in mind, first and foremost. I do apologize for having brought forth the human dimension and the needs of real people.

Miss Martel: Let me go back to what Mr Clarke said in response to my question that the people would not be able to pay their portion of the contribution. I appreciate what he has said in terms of the bill allowing for two things: (1), increased ceilings and, (2), he pointed out that some people may—and I am going to stress "may"—have more disposable income, depending on when they get hurt during the tax year.

I want to go back to the point that was raised during the hearings: that many people argued there should not be a ceiling, period. But away from that argument, even with the new ceilings in place, which are not even as much as Paul Weiler suggested in his report, there will be a large number of highly skilled people—Gilles mentioned the people in his riding—who will be far in excess of the ceilings and who will suffer significant wage loss. They are back in the same boat in that the amount of money they were earning when they were working normally is going to be dramatically reduced. They may have mortgage payments, they may have a boat or they may have car payments. I do not know what they are going to have. They may well not be in the position to make those kinds of payments for their portion of health care benefits.

Mr Dietsch: In dealing with the area of the bill we are talking about, and I appreciate the point that is being raised with regard to individuals who may be well above the ceiling in their earnings and taking a considerable step down, I cannot help but relate to the point that was made earlier by Mr Pouliot, that individuals who earn more money apparently seem to have more benefits.

What we are talking about are those who do not enjoy those kinds of benefits. In relationship to the point that is being made, I think it is an area under another part of the bill.

The Acting Chairman: It is an interesting point of view.

Miss Martel: Mr Chairman, if I may, the point of the matter is that they can only get the benefit if they pay into the benefit at this point in time. The people are only eligible to receive employer benefits if they pay a portion of those benefits. That is what the amendment says. What I ask Mr Clarke is, for those injured workers who pay 50 per cent, 40 per cent or 30 per cent of their benefits and the employer kicks in the other half, if they cannot continue to pay their share they will get nothing, because the employer stops paying his. They get no more contribution.

The point I am trying to raise with him is that there will be a large number of people who will not be able to maintain their share of the benefits that they used to put in, in order to enjoy everything else they used to enjoy. There will be a lot of those people who will not be able to continue to pay into that because of their reduced earnings.

What I have asked him is why we do not have an amendment that says that for those people who cannot continue to pay, the employer will pay the full shot and the worker will reimburse the employer afterwards when he has returned to work and is back at his full income. I think that is a legitimate argument.

Mr Dietsch: You are talking about the period after the one year?

Miss Martel: Right; when they return to work. It may be any time during the one year. If they cannot, from four months after they have been hurt, continue to pay, then the employer will continue to pay for the rest of the full year. When the worker returns to work, he will reimburse the employer for any amount the employer has put out on his behalf. That way the benefits continue.

Mr Pouliot: Mr Chairman, you will note, of course, that our party did not say "Make the rich pay." We did not invoke old clichés such as "Let the employer pay," because we do realize there is a shared responsibility here. We could have spoken at length about the responsibility of the workplace to be safer, and should it be determined, etc, etc, then the onus would be on the employer.

We did not do that. We want it to be part of the programs, and so on, but we want it to have more comprehensive coverage, as Mrs Sullivan acquiesces. There is nothing wrong with saying, "From the day of injury for ever"—there is nothing wrong with that—"until the time you are willing to go back to work." It makes a lot more sense than one year, it is more consistent with the act, than to say: "Have we been innovative or imaginative enough for the people who do not have those benefits? We will sweeten the package a bit." But that has not been done. We are saying that we will be more comfortable with the amendment if more was to be done.

The Acting Chairman: All right. Can we move on to section 3?

Miss Martel: No. I have an amendment.

The Acting Chairman: Do you have copies of it?

Miss Martel: Copies are prepared already, thanks to legislative counsel.

1630

The Acting Chairman: Miss Martel moves that subsection 5a(2) of the act, as set out in Mr Dietsch's motion to replace section 3 of the bill, be struck out and the following substituted therefor:

"(2) An employer shall pay the worker's contribution, if any, for the employment benefits when the worker is absent from work because of the injury.

"(2a) Contributions under this section are required only if the employer was making contributions for employment benefits in respect of the worker when the injury occurred.

"(2b) A worker on whose behalf an employer pays contributions under subsection 5a(2) shall reimburse the employer upon returning to work."

Miss Martel: What we are trying to do is to anticipate those cases—and I do not know how many there will be and certainly Mr Clarke was not aware today of how many people may or may not even enjoy these types of benefits presently. But we are trying to anticipate the case where, in the workplace, worker A does have an agreement with the employer concerning employment benefits.

The agreement may be a number of things. The worker and the employer may share the costs of those benefits 50-50 or whatever percentage; there may be a breakdown between the employer and the employee. Under the present reading of this particular section, entitled Eligibility, the worker would only receive the benefit of the employment benefits while he is off work if A, the employer was making the contributions at the time of the injury and B, if the worker himself or herself then continues to pay whatever portion he or she had paid before he or she was hurt.

I have tried to point out that my experience has been that any worker who is injured and is off the job and receives only workers' compensation benefits is, in many cases, in a destitute situation. If he has mortgage payments, car payments and any other kind of payment over and above that, he is having a hell of a time to make ends meet, and it is not uncommon to see workers living from cheque to cheque every two weeks. I think anyone who does workers' compensation can recognize that.

Mr Clarke has said the ceilings will be raised and he is correct. However, I would point out to him that in many cases, even though the ceiling will be raised, many workers will still be covered under the ceilings and will not be making anywhere near what they would have been making had they been at work. In many cases, some of those workers who are high-wage earners may have even higher payments than the rest of us, as well. But that is just making a general statement.

It seems to me that what the present wording does is penalize those workers who, for whatever reason—and I would think the reason would be because they have a number of other payments they have to make and they have to keep food on the table—may or may not be in a position to continue paying in to the benefits package in order to receive the health care benefits, a continuation of their pension, etc.

What we have proposed, very simply, is that if the employer is already paying a portion, if the worker is hurt and the worker cannot pay for his portion of the benefits package, the employer should then pick up those costs in order to have continuity and ensure that the health care benefits and the pension payments continue. At such time as the worker returns to work, he can surely reimburse the employer for whatever the employer has put out. He would be back at his full wage rate at that point and be in a better position.

So I think what we are saying is, to make it easier on the worker, to not penalize those people who cannot afford to continue with those benefits, we should allow the employer to continue paying the full share until such time as the worker can reimburse whatever the employer has paid out on his behalf.

Mr Pouliot: I cannot imagine for one minute someone who has dental coverage losing his benefits because of a few months' lapsed time, being unable to make the contribution, and then having to wait under the provisions of the plan for a period of re-entry.

Major employers, because we are talking about meaningful benefits, are quite used to what is being proposed here. For instance, if a person is on workers' compensation—and we all know it can take time; it can take up to three months, if not more at times, before the first paycheque comes in—in the meantime, there are all kinds of things. There are weekly indemnity programs, there are lost wages, depending on the package you have with your employer. Large employers I have dealt with do advance money, so they would not be shocked, appalled or surprised by this. It is something they do under the weekly indemnity program.



Depending on the carrier, if you are dealing with certain insurance companies, it may take longer than others. It may take a month, a month and a half. In the meantime, you are eligible after the four days of sickness. It is well documented. The thing is you are not getting the paycheck. What the employer does through its industrial relations department—you are aware of those things, Mr Clarke, in the real world—is that it will tell their employee—

Miss Martel: This is not the real world.

Mr Pouliot: No. That is the unfortunate part.

"Okay, we'll give you so much money per week until you get the cheque from the insurance company." That happens every day. It happens under the WCB and it happens under the weekly indemnity program.

What we are asking here is that you have under reimbursement, "A worker on whose behalf an employer pays contributions under...shall reimburse the employer upon returning to work." It is done every day in the working world, but what it gives is a little more flexibility to the employee, peace of mind, whereby somebody does not have to worry about his ability to keep those benefits. He will, and when the person returns to work, of course, he or she will pay. I think it is very normal. It is being done in many cases now anyway.

If you put it into the act, it makes a little more sense. I think it is completely reasonable. I fail to see why someone would reject what the member for Sudbury East (Miss Martel) has proposed. I cannot see anything. I can only see good things here. It does not cost anything more at all to the employer. Unless someone has ulterior motives, why would such a candid, straightforward amendment that does not penalize the employer be turned down?

Mr Dietsch: The question I would have is that in relationship to the amendment, if I understand, you are suggesting that the benefits will be paid in perpetuity until there is a return to work?

Miss Martel: No. Unless I am incorrect, Mr Clarke told us last week that where the benefits have been picked up by the employer, after one year's time, if the worker is still off and on TT, those benefits will automatically revert into his wage rate. The period I am concerned about is the one year we are dealing with, the one year the employer has an obligation under, strictly the one-year period, because it seems to me that afterwards that would go back into his TT rate and he would experience an increase in his weekly cheques.

Mr Dietsch: So it is the first year of obligation that the motion refers to.

Miss Martel: It may not be even a year. It would be that period of time where the worker was off work and where the employer was obliged to make the payment. It may be that it will not even be a full year. The worker may pay three months and then be unable to pay any longer and the employer would then be obliged to pick it up and continue, either up to the one-year maximum or, if the worker goes back to work, up until that point of time the worker returns to work.

Mr Dietsch: Go ahead. I will hold my other questions.

Mrs Sullivan: I want to review once again the time lines and the question of what happens when a worker is not able to maintain those



contributions. In that situation, the employer would not pay either and the temporary benefits would increase.

1640

Benefits, as you know, are defined in clause (1)(1)(ea), and we have had a full discussion of those benefits. We know under section 40 that they are taken into account in the calculations for temporary disability payments and at the conclusion of the year's period would also be taken into account were there not a final wage-loss determination. I think we should also look at what may happen with the worker.

Miss Martel: Can I ask a question there, if you do not mind? If that is the case, that if the worker cannot make his contributions and the employer does not pay his share and the TT rate immediately increases, what is the whole point of the whole section? Would it not make much more sense that right off the bat when the guy goes off work, that all that would be included on the form 7 and his TT rate would automatically increase? What is the point of adding this provision and how does it become a new protection, then?

Mrs Sullivan: It is a new protection because the benefits that accrue from the coverage are being maintained. It is very clear.

Miss Martel: No, because it seems to me that what you have said is that if the employee cannot, for whatever reason, make his portion of the payments during the time he is off, and subsequently the employer no longer makes his payments, then immediately the worker's temporary benefits, his two-week cheque, would increase to reflect what he would have received had he not been hurt, to include that whole employment package.

Why, then, is there any section at all concerning the employment package if that is the case? Surely if that were the case, from the moment the guy got injured, that whole employment package would be added to his TT rate and would continue through the whole—

Mrs Sullivan: Once again, if we go back to the definition of benefits, we recall that they include life insurance coverage, health benefits and pension benefits. What the bill is saying is that there will be a new protection for the workers that will ensure that those benefits will be available for the period of time of up to one year after the accident, which they would not have received before this provision. It is a substantial new protection.

I also want to say a couple of other things in relation to your amendment. We know there will be certain circumstances where workers will not return possibly to employment, and possibly to employment with their current employer where the injury occurred, because of the nature of the impairment arising from the accident. In those circumstances, I think you have not delineated, for example, where the recovery of the donations, if you like, the contributions for that benefit period, would be taken from.

Would you think it would be viable or valid for them to come from workers' compensation under the act? Would you take it from their noneconomic loss? Would you take it from their wage loss? How would you reimburse the original employer? I think you have not taken into account some of the flow-through that would be required in these circumstances.

Miss Martel: Two things, if I may.

The Acting Chairman: Are you finished, Mrs Sullivan? Are there other members who wish to speak, or are you going to wrap up now, Miss Martel?

Miss Martel: I do not think I am wrapping up yet.

Mr Pouliot: You do make a very valid point. There is no question that should the injured worker not be able to return to the workplace with the same employer—and we do not provide coverage; you are quite right in pointing that out—what we are saying here is: Why should the employer be left holding the bag? What guarantees, what mechanism, method, approach or style do we have to compensate the employer? You are quite right, under reimbursement we should have put the onus on the Workers' Compensation Board to make sure that the employer is not deprived of the share of benefits—not a donation—which have been advanced to the worker.

Interjection.

Miss Martel: You are saying the board does?

Mr Dietsch: The board, yes. All the other employers pay.

Miss Martel: That employer pays into the Workers' Compensation Board himself. He pays a premium to the board, in any event. If we are going to hang our hat on those workers who—

Mr Pouliot: It is not all that complex.

The Acting Chairman: Maybe we could just have one member speak at a time.

Miss Martel: I think if we are going to hang our hat on the fact that there has to be some mechanism whereby the employer can be reimbursed, and you vote against that motion and allow a worker to be penalized and not receive—for him, his family, his kids or whatever—those health care benefits, I think we are going in the wrong direction.

I really do think a mechanism could be worked out whereby in those cases if the worker never returns to work either the board reimburses him or, if he gets a pension, a portion of that comes off his pension in the first pension cheque he receives, or it is deducted from the first future loss of earnings cheque he receives. To say that because I have not outlined a mechanism here whereby an employer who may be left holding the bag cannot get that money back is really a kind of feeble excuse to not provide the protection for the worker that we are looking at.

Mr Pouliot: It is also very unfair.

Miss Martel: If I can go back to the question of these new protections, my understanding is that during the first year a worker is off, provided that the plan is in place, the worker then has the ability to go to the dentist, take his kids to the dentist and know that is going to be paid for in the first year. I understand that. What happens in the case of the worker who, after that one year—and you got into this, but just bear with me for a second—does not return to work and is still on IT? What you said to me on Monday was that the value of those benefits would go on to his IT rate. That is just the value. That does not mean he can still take his kids to the dentist and have that coverage provided, does it?

Mr Clarke: You are right.

Mr Pouliot: In other words, the employer's portion is long gone, for the coverage, in this case.

Mr Clarke: That is right. The coverage is for one year.

Miss Martel: So what happens in this case, if I can just work back, is that we have a guy who is off for three months, and suddenly he can no longer make the payments for health care, etc; he does not pay any more and the employer drops his obligation. He may well get the value of the benefit package added to his IT rate, but he still cannot go to the dentist and take his kids and be covered, right?

Mr Clarke: That is correct.

Miss Martel: So he has lost the protection. Any way you look at it, he has effectively lost that protection.

Mr Clarke: Yes.

Miss Martel: Do you not see what we are trying to say?

Mrs Sullivan: He will receive the additional value of the contribution in the calculation of his temporary benefits.

Miss Martel: But the employer and he would pay a certain portion. Right now the Legislature picks up some of those costs, but the portion we pay into that package—say, \$10—is a far cry from what he is going to pay at the dentist's office right over the counter, is it not? Or in the case of prescription drugs and he is no longer covered under a drug plan, the amount he is going to pay over the counter to get those drugs is far more than the portion he would have contributed to the plan in the first place, correct? He may be paying \$7 a month for a drug plan. If he goes to the counter and he does not have a drug plan any more he is going to be paying \$70. The value of what he loses in terms of the coverage is not going to be added on to the IT rate.

1650

Mr Pouliot: Absolutely. But I am sure there is no deliberate or systematic attempt to hurt people here. It is just that it is not the way to make it work.

Mrs Sullivan: Miss Martel is quite right. The protection is a new one. It has not existed before. It is a significant new protection for workers for the year following their injury. The time line for protection relates to the calculation of the wage-loss award. She is also right when she indicates that if the benefits contributions are not made and the additions are made to the temporary benefits, the additions are based on the cost of the contributions for the benefits, not on the value of the benefits. That fits precisely with the definition of salaries or wages in the act: including remuneration which is capable of being estimated in terms of money.

Mr Pouliot: She is right, but you are never going to do anything about it. An analogy is the grievance procedure, where the award comes from the arbitrator. They spend three pages to tell you you are right, and then the last paragraph to tell you that the grievance has been denied.

You feel you have moved significantly, that it has been an improvement. You agree with my colleague that she is right in recommending—

Mrs Sullivan: I agree with her that she is factually correct.

Mr Pouliot: But you are being ultraconservative and you will not acquiesce by putting this in here.

Miss Martel: If I can just continue, I do not know what the portion of the employer's or the worker's benefits may be. You may know better, because you negotiate a number of contracts.

Mr Pouliot: I have suffered under those systems.

Miss Martel: The employer may be paying \$30 a month and the worker \$30 from his side, in order to entitle him to all those things we have talked about: the dentist, life insurance, etc. If he cannot make that payment, and he then has to go to the dentist and pay \$130 to get his kid's teeth fixed, surely it is not too much to ask that at whatever point in time he can no longer continue to make that \$30 payment, the employer would not be that hard-pressed that it could not make a \$60 payment instead.

We are not saying here that every worker, for the whole year he is going to be off, is suddenly unable to make that payment. Many of the workers may not be off for the full year; some of them may be off longer. But for the sake of the employer picking up that portion of the contribution in order to allow that injured worker and his family to enjoy those benefits, the value of which are going to be far beyond the cost he or the employer would pay—Surely you would not defeat a motion that would say the employer will pick up whatever the worker cannot for the duration of time the worker is off.

We are not looking at enormous sums of money. What we would be providing the worker is all those benefits which surely he is entitled to; which surely, if he is on compensation, in many cases he would not be able to pay out of his own pocket without the benefit of those plans. How much does it cost to buy drugs if you do not have a drug plan? How much does it cost to go to a dentist and pay the fee for service? It is bloody expensive.

Mr Dietsch: That is precisely the reason why she or he would not drop the benefits.

Miss Martel: But you have no idea of what other payments he may be making, how much less money he may be making because he is on compensation, how many kids he has to feed and what his mortgage and house payments are. Mike, you get people in your office. When they come in they are in the process of losing their houses because they cannot make mortgage payments. Do you think they are in a position to make the additional \$30 or \$40 or whatever it is a month, to try to retain those benefits? They are worried about feeding their kids. They are living from cheque to cheque. Surely it is reasonable to expect that if they cannot continue the payments the employer would.

The Acting Chairman: Mr Pouliot, now remember, I will remind all members to address their comments through the chair.

Mr Pouliot: All right, through you, Mr Chairman, here is a worst-case scenario. A worker gets injured in the month of January—we could say, for the sake of argument, on 4 January. The worker goes back to work on 26 January: a short time indeed for a lost-time injury. In terms of a dental



plan, a drug program, in this worst-case scenario he can apply only within six months of employment, if you wish, or after one year, or in the month of December of the following year. But since that person from 6 January until the 24th missed his or her premium payments, that person is disqualified and yet he is back at work. It does not make too much sense, but it is a true scenario. Of course —

Mr Dietsch: No.

Mr Pouliot: Why not? Look at those plans. You can only apply, let's say, in the month of December of the following year and so on.

I will give you an analogy with some validity, just to illustrate those plans. They are all pretty well the same; there are some variants. You come to work here from the time you are elected. If you miss the period of entry into the dental or eye program and you go and see the benefit program the next day and say, "I want it starting in July," do you know what they are going to tell you? They will tell you, "Wait until December," and until December you have no coverage.

I go back to the worker who gets hurt for a short period—

Mrs Sullivan: Mr Pouliot, his privilege would not be discontinued. That is the point of this section of the act.

Miss Martel: But it would be if he does not make his payments.

Mr Pouliot: If he does not make his share of the arrangement.

The Acting Chairman: Through the chair, please.

Mr Pouliot: If it is a 50-50 cost on a dental program and the worker does not pay the 50 per cent to the employer from his compensation cheque, he will not be covered.

The Acting Chairman: Is there further debate?

Mr Pouliot: No.

Miss Martel: I would like to get some response. We have talked about the temporary benefits and we have worked out that all that will be adding on to the worker's wage rate will be the cost of the benefit and not the value. The value to that injured worker may be far, far beyond what the cost is.

We have already established that he is going to lose, one way or the other, if he has to take his kids to the dentist. For the life of me, I cannot understand it. The other reason we heard for not supporting this was that there was no mechanism to reimburse the employer in the case that the employer was left holding the bag.

Given that we have worked through those two problems and we have established that what he is going to lose is far, far greater in terms of value than whatever cost he may pay into the plan, and given that there surely must be some way to develop a mechanism to repay the employer—we are not talking about vast sums of money—I cannot for the life of me understand why we are at this position that it would not be accepted.

The Acting Chairman: I think we must be ready for the question. Is

the committee ready for the question on Miss Martel's amendment on section 3?

Mrs Sullivan: Agreed.

Miss Martel: No. I would like 20 minutes, if not to find Gilles, then to find a Tory.

The Acting Chairman: The committee will then vote at 17 minutes after 5.

Mr Dietsch: I cannot help but comment about this abuse of the rules. My gosh, really. I appreciate the necessity for 20 minutes to find members, but when members just get up and leave the room so that we can call 20-minute bells, my gosh.

There is no question in my mind that you are doing an excellent job as per your leader's instructions.

The committee recessed at 1700.

1715

The Acting Chairman: The committee is now back in session. We have a vote on an amendment by Miss Martel to section 3.

Miss Martel: A recorded vote.

The committee divided on Miss Martel's amendment to section 3, which was negatived on the following vote:

Ayes

Martel, Pouliot.

Nays

Dietsch, Lipsett, Stoner, Sullivan, Tatham.

Ayes 2; nays 5.

The Acting Chairman: Can we then move on? Are there any questions about section 3?

Miss Martel: If members take a look at their reading of that particular section—and this is the penalty section—they will see that the wording is quite specific. It says, "If the board makes a finding that an employer has not complied with its obligations under this section, the board may levy a penalty on the employer to a maximum of the amount of one year's contributions for employment benefits in respect of the worker."

1715

My concern comes with the wording of "may." We heard many times during the course of the public hearings that throughout the current act, and indeed throughout Bill 162, it seemed that the workers were always in a position of "shall" and the board was always in a position of "may" or "may not" want to do something.

At that point in time many people said that if we were going to ensure that workers knew what their rights were and reps knew what their rights were, then the board should have to do certain things. The board should not be left with the discretion of determining what action it may or may not take, depending on whoever dealt with the claim and whatever he felt like on that particular day.

I would like to ask Mrs Sullivan or Mr Clarke: If we are intent on ensuring that workers get this new protection, why is it that if they do not comply, if the employers actually do not pay their share, then the board may or may not fine them in that event?

Mrs Sullivan: We may want to refer at some point to legislative counsel relating to the use of the word "may" in law, but I think there would be some circumstances, for example where the board may have made a finding that an employer had not complied but where that noncompliance was occasioned by an oversight that has since been corrected, in which case the board would not want to levy a penalty when indeed there was no loss to the injured worker. That would be the circumstance where the penalty would not be levied, because the oversight or the contravention was cleared up.

I do not know if legislative counsel would like to address the use of "may" generally in terms of legal drafting.

The Acting Chairman: I think it might be useful to have legal counsel provide the legalese here.

Mr Pouliot: And you can thank Madam Sullivan.

Ms Hopkins: It is not unusual in penalty sections to use the word "may" as opposed to "shall." Ordinarily, the reason you choose to do this is to give the decision-maker some flexibility in circumstances where it would not be fair to impose a penalty, circumstances like those described by Mrs Sullivan.

Mr Pouliot: I am a worker and my parents were not rich, so with respect, I am seeking more clarification.

I read here under penalty, "If the board makes a finding that an employer has not complied with its obligation under this section, the board may levy a penalty."

I am wondering, if I go back to obligations, where is the obligation if you cannot monitor compliance, because you have the word "may" as opposed to "shall," if someone is really under no obligation? So it is not a matter of complying with its obligation, the employer does not pay and you have as much clout as Mickey Mouse under the hat to make him pay.

Ms Hopkins: It is not unusual in matters of criminal law, the first time there is an offence, for the judge to say: "You are guilty of an offence, and I will let you off with a warning. Don't do it again." It is in that sort of situation where the use of "may" becomes useful.

Mr Pouliot: "Go to your room."

Ms Hopkins: Yes.

The Acting Chairman: Do other members wish to comment on this section?

Miss Martel: It seems to me that the reasoning referred to for the use of "may" is that there may be some kind of oversight on the part of the board or the employer. You would not want to penalize an employer who had every intention of paying, but from oversight on his part or someone else's part, he did not in fact do that.

I would ask members to go back and read the entire sentence and keep in mind that line of reasoning. The penalty section says quite clearly "if the board makes a finding that an employer has not complied with its obligations."

Surely, it seems to me that if I, as an adjudicator, got a call from a worker who says: "I've read this act. I am paying my portion of the contribution. The employer is not paying his, and therefore my benefits are no longer being continued," then I would call the employer and find out what was going on. If it was an oversight, I would pick up that oversight quite quickly by talking with the employer. I would remind him quite severely that he had better get into the process of paying on behalf of this gentleman or he is going to suffer the penalty. Surely, we would pick up an oversight in the course of finding out if the employer has complied.

It was my understanding that the whole point of this section was to get at those employers who had no intention whatsoever of paying on behalf of the worker, out and out refused, leaving that employee with no kind of benefit protection at all.

It seems to me that there is no problem with putting in the word "shall," because the board is going to pick up, during the course of its investigation to see if he has complied or not, a mere oversight. The point of the whole exercise is to get at those employers who do not want to pay in the first place and have no intention of paying, and therefore put the onus on them and fine them a significant amount of money for their reluctance to do that.

The Acting Chairman: Are we prepared to move on, or do you have an amendment?

Miss Martel: I have an amendment. My goodness, I almost forgot.

The Acting Chairman: Miss Martel moves that subsection 5a(3) of the act, as set out in Mr Dietsch's motion to replace section 3 of the bill, be amended by striking out "may" in the second line and inserting in lieu thereof "shall."

Would any members wish to comment on this amendment? It has been rather well discussed, but perhaps there are some other points.

Miss Martel: Yes. Let me go back to raise the point of "shall" in the current legislation. I could be wrong, and the board may want to correct me on this, but it seems to me that there also exists a penalty under the current act for those employers who are late in submitting their form 7, which is their report that a worker has been hurt or has suffered an industrial disease while on the job.

Under the current act—I could be wrong—it seem to me that the section says the employer shall provide the Workers' Compensation Board with the accident form within a set number of days, and if he or she, as the employer, does not do that, a penalty will be levied.



Many times at the board that was overlooked completely. Time after time, a company like Inco would neglect to send in its form, which would delay the benefits to the worker even further.

The point I am trying to make is that the legislation, as far as I am aware, and I could be wrong, did say "shall" be penalized and they were not penalized. We are looking at an even lesser situation where it does not even say "shall" but "may."

1730

Sometimes I wonder, if the employer does not think he is obliged by the rules under the Workers' Compensation Act when the words say "shall," what the heck is the employer going to think when the word says "may"? It is so loosey-goosey as wording. I cannot think why we would not, if our interest is—and it should be—to make sure the employer keeps up his end of the bargain, in fact say "shall" and he will be obliged to do that. Otherwise there is no obligation whatsoever on the employer to do a darn thing.

The Acting Chairman: Are we ready for the question?

Mr Pouliot: No. As usual, there seems to be a trend here which really, if I may be bold, could scare the living daylights out of people. Things are stacked: You have a certain methodology when it comes to the workers, in this case the less fortunate people who get hurt on the job, and when it comes to the employers, where you are either naïve by giving them the benefit of the doubt, relying on the good old corporate ethic—we know where that has led the workers in the past, we know only too well; I could speak at some length on that, starting with both hands in the pension plan of men and women in this province and elsewhere.

Why do you not be consistent? Why, Mrs Sullivan, do you not make an effort to allay the suspicion which some members—you will say members of the opposition; rightly so—have, because of the provocation, the confrontation, the systematic and deliberate double standard that is imposed.

How can you promote at great cost to the taxpayers better protection for people. Then, when you read the act itself, you say: "Oh, my gosh, I believed. Was I naïve again? Was I too gullible?" You come here and you say: "This is going to be good. It's going to make life more bearable, it's going to offer added protection." That is what we were told: We can look to tomorrow with confidence and it is going to be better than today.

Then the disappointment you have with clause-by-clause. When it comes to the workers, if at any time it is in doubt, they will carry the guilt. When it comes to what you call risk takers, I guess, in your argument—and you do not mean miners or people working in a paper mill; you mean the risk takers on Bay Street—people with ability to pay do not have an obligation to do so. People with little ability to defend themselves have all the responsibilities the act entails.

Mrs Sullivan, surely there is a need. By the stroke of a pen, the acquiescence of the people who are all, out of embarrassment, reading; either that or they are falling asleep—Do what is right for the workers. If I was to ask how many people here have been under compensation, how many people here have ever worked shift work, how many people have negotiated a collective agreement, how many people have been a strike director—I have been all of those. I am proud of my heritage as a worker. I am very proud of it. When I

see those things I say, "No, it does not do my brothers and sisters any good, it does not improve their lot."

I spent many long hours, after hours, drafting some amendments that would make it simpler, more workable in the workplace. I spent countless hours doing that in the wee hours of the morning. Then one day I said, "Gilles, give your amendments to the people of the committee. You get through four or five of them and then you have another 45 coming forth. You're not going to waste the people's time." I say: "My God, I'm against the whole bill. What's the use of having the 45 amendments that are in my office right now if we can't even get a simple word"—I mean, I can take a hint.

What is the intent of what we are doing here? It is to benefit the people of the workplace. We have to keep it relatively simple. We have to do better than what we have done. Do not make it too complex, but mainly make it better so that when I go to work in the morning contributing to the wealth of the province, of the country, especially in our neck of the woods, where we are resource based and we know what WCB entails because we have a very high rate of accidents because people work so hard—

From time to time, they may say: "What's the use? I pay so many taxes. Am I getting value for money?" They are paying the premiums on this. Whether they pay it on their deferred wages, it all comes out in the wash. There are no freebies here, not for the workers anyway. They do not have numbered companies. They do not have a mechanism where they can find loopholes. They do not have high-priced lawyers or foundations.

What I am saying is that it all comes out in the wash. When you tell them what you call your commitment, that you have a vision that the workers when they go to work will be protected in case of accident—You say that on the one hand and we all believe you. You said it is going to get better, and we helped the government promote those things. We do not say in the House, "This is good," or "If and but," but when we see the actual act, this is an attempt—

Mrs Sullivan: On a point of order, Mr Chairman: Could the member speak to the amendment?

Mr Pouliot: I am speaking to the amendment here.

The Acting Chairman: I was waiting patiently for him to directly relate it to the amendment. I am sure he is about to.

Mr Dietsch: I would like to know when he worked shift work.

Mr Pouliot: In conclusion, it is a simple amendment that says to the employer: "We want to make sure you honour your share." Half an hour ago, we were talking about the worker's obligation, what if he or she cannot pay their share, but when it comes to the employer we do not put in the clout. We talk about his obligation but we tell him he is not obliged to.

Why do you not do what is right so you can avoid the embarrassment of Jane Smith, assembly line worker, versus General Motors? Share and share alike. That is all we are asking for: justice, fairness.

I could go on and on. I have in my briefcase seven real cases, because I too feared that this kind of wording would appear. I have presented one case, hypothetically, if you like: Jane Smith versus General Motors. We all know

where our sympathy should lie; we should side with the case of the injured worker. I do not have any time to present the other five or six cases.

I will conclude by saying: Please, you are not giving anything away. It will not be seen as a compromise. Do what is right. Eliminate the word "may" to give the obligation some meaning, to say: "You have to do your share. You have to do your duty."

Miss Martel: Legislative counsel made a suggestion to me during the course of this that may respond to Mrs Sullivan's concerns for those poor employers who may be penalized by the board for an oversight, an oversight which may or may not be their fault. Legislative counsel suggested to me that what we could include to compensate for that particular problem is to change the wording where we would say that the board would apply —

The Acting Chairman: Miss Martel, are you amending your amendment?

Miss Martel: I want to see if this is going to be acceptable here before I start to move some of these things around.

The board could provide a nominal penalty for those situations where an oversight is clearly the case but that we should still have the compulsory penalty and the word "shall."

1740

Mrs Sullivan: In my view, the amendment and the changes to the amendment that the member proposes are redundant. They are covered in this section.

I would also like to refer her to subsection 5a(4), where an additional obligation is placed upon the employer, of liability "to a worker for any loss the worker suffers as a result of the employer's failure to make the contributions required by this section," whether the failure to make the contributions was deliberate or was an error. In my view, the member's suggestions of changes to the hasty amendment she put forward are redundant.

Miss Martel: It was not a hasty amendment; it was drafted by legislative counsel two days ago when I went through this particular section. I cannot see, for the life of me, where this is redundant. It seems to me that all the employer has to do in this particular case, under the penalty and under subsection 4, is to prove that the reason he did not pay the worker's benefits, even if that did result in a loss to the worker, is because of an oversight on his part or the board's. That is all he has to prove. In that case, he has no obligation to pay a red cent, regardless of what the worker's loss is. That is the point we are trying to make.

Subsection 4 does not cover the worker and ensure that the employer is obliged to pay any type of penalty. The worker may well lose three, four or five months' coverage because of the employer's oversight. All the employer would have to do is prove it was an oversight, and there would be gone the penalty. It is that simple. I cannot see where there is any obligation of any shape or form on the employer to comply under this section at all.

Mr Pouliot: What happens to eligibility? It tells the employee that the employer was making a contribution for employment benefits in respect of the workers. What happens if the employee loses coverage because the employer fails to honour his share of the bargain?

Mrs Sullivan: You will see that in subsection 4, where the employer must compensate the worker for any loss the worker suffers as a result of the failure to make the contributions required.

Mr Pouliot: I am satisfied.

Miss Martel: He may be, but I am not. After this employer puts the worker through hell for five, six, seven months and then decides to pay his portion, or gets a call from an adjudicator who says: "This worker has been suffering a loss for the last months. Would you mind paying your share now?" and the employer says: "Oh, pardon me. Am I ever sorry for this oversight. Sure I will pay the employee whatever his part of the contribution was and he will be reimbursed;" after he put that worker through all that kind of razzamatazz, why does the employer get off scot-free?

He suffers no penalty whatsoever. The only action has been, because he got caught, to pay for whatever loss the worker has suffered, but he washes his hands and says: "Well, we'll do it again next time too, because the board's not going to penalize me in any way, shape or form. All I have to do is make sure I cover the loss of the worker, but I can continue to put this worker, the next worker and every other worker into a dilemma by not paying my fair share until the moment I get caught, pay up, but suffer no penalty."

What is the point? If you are trying to provide protection for people, you want to make sure that from the moment the injured worker is off he is covered. If he is paying his share, then he is covered the whole time. What onus is on the employer to make any kind of contribution whatsoever if he knows full well that he is not going to suffer any penalty regardless, that all he has to do is pick up whatever his contribution would have been whenever he gets caught by the WCB?

Mr Pouliot: We are quite satisfied, with the help of counsel. I can appreciate that; usually, if it is a first offence, it will be. My concern is not so much with the penalty mechanism; my concern is with the obligation and the assurance by obligation that the worker will be covered. I can see that it is an oversight in some cases. The thing is I want the emphasis, the focus to be on the obligation that the worker is covered.

The Acting Chairman: Are we ready for—

Mrs Sullivan: I would like to respond briefly here. This will not take a long time. I think that in her argumentation Miss Martel has made the assumption that the employer will not pay because of the word "may." I think she should be reminded again that there are two aspects to the penalty. There is the financial penalty, which may indeed exceed the contributions the employer did not pay; in other words, if there were one mispayment, the board could levy a penalty to a maximum of the full, entire year's contributions. Additionally, that penalty is paid not to the worker but to the board. The worker's redress comes through subsection 4. That, to me, is the significant aspect of the protection for the worker.

Mr Dietsch: I think the other point that has to be made as well, based on the comments that have been made by Mr Pouliot, and before he leaves the room, is that it is somewhat striking and shocking, to say the least, to pass comments in a rather righteous form that would lead one to believe the opposition party is the only party that has every had any experience or any workers. I would like to remind Mr Pouliot who comes from, as he puts it, a



working background and is very proud of it, that I as an individual come out of the labour movement as well.

I come out of the labour movement and I previously have been an injured worker, have wrestled with the trauma of the injury and have recognized that the opposition party does not hold all the keys and answers in representing workers in this province. I have a long history of working shift work in the middle of the night. While perhaps Mr Pouliot was resting in his bed with his family, I on the other hand was out trying to make a living for my six kids.

Recognizing that it is not always easy, however, the point of my comments is based on the instance that the employers in this province are not necessarily the evil culprits one would lead us to believe. There are and there will, I am sure, continue to be those who are abusive of privileges, but by and large the employers in this province have an obligation and they fulfil that obligation. I think it should be recognized that what we are talking about is a very small, minute number of people. As the abusiveness goes on in the system, there are as many, if not equal, parts of abuse on both sides of this question. I think we have to look at the obligation, as has been pointed out.

Miss Martel: What is it?

Mr Dietsch: We are dealing with that obligation in terms of addressing the points of protection for workers, and in a very adequate way I might add. I think that as we go through in terms of dealing with benefits, benefits that have never been covered before—I think that is a point that has to be stressed—in relation to that, I think we have to recognize that this act now, through the amendments being put forward, deals with—

Mr Pouliot: Recognizing the error of your ways.

Mr Dietsch: —profits, of the workers in this province being able to have that coverage that they never had before, very important coverage. If we look at employers abusing the system to say that employers would not at a point be able to cover those benefits, to say that they would deliberately deal with that—we have to look at the implications, as Mrs Sullivan has pointed out on a number of occasions. We want to make sure that the injured workers in this province are protected and are protected well, and that those individuals by the wording under subsection 3, the penalty, those individual employers who are abusive to the system will be apprehended and dealt with, as outlined in this area.

1750

To say that every employer must be dealt with in that relationship or shall, under obligation, be penalized for what could perhaps be an oversight, or as in the words of others—let me put it this way: you can take an employer who has paid the benefit program over and over and over and has been a very good employer. It has recognized that it has made one error and you take and slap, by saying "you shall," you levy a penalty on that employer. I think it is definitely a wrong way to go.

Do you take the analogy of a driver going down the highway who has never broken the speed limit before and gets caught and the policeman saying, "you must pay a penalty now"? I think not. I think there is room within that class that those individuals have an opportunity to be forgiven, and the board has

that jurisdiction. If we deal with it so that we use the word "may" to deal with those penalties.

Quite frankly, I get a little concerned over the points made with respect to those employers being accused of being less than wholesome, less than honest, mistakes having been made. I get a little concerned that we lump all those individuals into a basket and deal with them in that relationship. Quite frankly, I cannot understand why the opposition chooses to treat employers that way. It is disturbing.

From an individual who has been in that work scene, an individual who has been treated, I think, rather well by some of the previous employers I have had the opportunity to work under in my past careers that I have taken up, I think it is important to note that—do not suffer from too much righteous indignation to think that you are the only individuals in this province of Ontario who represent workers, who represent workers well or who understand workers' problems and understands the difficulties an individual goes through when he suffers a workplace injury.

I can point out that my employer, in dealing with this type of compensable injury in the past, has a good, solid, upstanding reputation in the community. They recognize that they have made some mistakes in the past, but I do not want people to be led to believe that those individuals have not addressed those concerns and addressed them well.

I think I would be less than honest with this committee if I felt that by changing the wording over to "the board shall levy a penalty on the employers" who are out there in the workplace—that concerns me deeply and I find it most disturbing to think that we, as a government and a legislative branch of Ontario, representing the constituents in our particular, respective ridings, would think of employers whom we also represent in our ridings, would think that those individuals should be all lumped together and treated in the same fashion. It is most disturbing and I just cannot bring myself to support this kind of resolution that is before us.

Mr Pouliot: On the point of order my colleague has raised, I was careful at times—

The Acting Chairman: There was no point of order; this is on the amendment.

Mr Pouliot: On the amendment: I do not mind, and we do not mind when issues are discussed. Our party has never claimed to have a monopoly on the social conscience, but in terms of ethics, decorum and good manners, it is difficult to sit idly by when someone is deliberately maligned. Hansard will attest—it is its mission, its duty, its mandate—that we talked with high respect for employers; we just wanted to, in quotes, make sure. To have Mr Dietsch refer to or feel a certain malaise—historically the workers in this argument are the people whose consensus counted the most. One could candidly put forward, "If you do not believe us, ask the workers."

More important than personality clashes, than differences of opinion, the workers have told us, and we are very secure with that, that they like our amendments and that through us these are their amendments, their position, their view of the proposed legislation. The members of your party know that, that our amendments are really what the workers want. We have had

demonstrations. In fact, we were told we had all the components of a riot by virtue of the present legislation.

Mr Dietsch: The workers in this province want you to penalize all the employers? I am sorry, Mr. Chairman; I just could not restrain myself.

Miss Martel: We are making sure there is an obligation on the employer to do something.

The Acting Chairman: Order. Go through the chair, please. One member at a time.

Mr Pouliot: If there is a malaise that at times borders on panic and necessitates verbal acts of aggression from Mr Dietsch, whether he wishes to delay the passage of reasonable amendments or is just buying time, I do not know what sort of tactics. I understand that he is not very Jesuitical, not very self-disciplined—it is obvious by this latest outburst—but he certainly asked and he can find solace —

Mrs Sullivan: On a point of order, Mr Chairman: I am not certain if there was something slightly unparliamentary in that comment, but the member might want to reconsider his characterization of the member.

Mr Pouliot: Again, with the highest of respect, the thing is that the workers are asking us to put forward the positive and workable, reasonable alternative that will make the government's proposed legislation better legislation. That is all we are saying. Again with respect, if you find this not to your liking and you choose personal attacks on members of Her Majesty's loyal opposition, so be it, but the workers, through us, can hardly sit by when our brothers and sisters are being maligned, and systematically. Stick with the issues; go to the streets; go to the factories; go to the floor and ask what the people want, your ambiguous position or our very clear position to make their lives better. I think you will find the answer there.

Miss Martel: I am not finished, but in the interests of time, I would adjourn the debate until Wednesday when we sit again.

Mr Dietsch: I would be willing to move the extension of the hour if Miss Martel would like that.

The Acting Chairman: We would need unanimous consent, which we do not have.

I will adjourn the committee until Wednesday at 3:30 when the debate on Miss Martel's amendment will continue.

The committee adjourned at 1800.

CARON  
XC 13  
-S 78

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT, 1989

WEDNESDAY 5 JULY 1989





STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitution:

Sullivan, Barbara (Halton Centre L) for Mr Dietsch

Clerk: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 5 July 1989

The committee met at 1540 in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

The Chairman: Before we get into the debate on the amendment moved by Miss Martel, there are three pieces of correspondence in front of members. Would the members please dig out of their piles the one that is simply headed up "UFCW, Bill 162." We should deal with that first because it asks us to do something specific. Did everyone find the memo?

On page 2, if you want to skip through the first part, they say, "We would request, on behalf of the 160,000 members...an opportunity to speak to your committee in regard to this very serious problem, before your committee takes action in this regard."

It has to do with multi-employer plans and paying benefits, as do the other two documents. Very simply, they have asked if they can come and make another presentation to the committee; so we must respond to them, yes or no. I leave it in the committee's hands. I have just one word: if we agree to do this with this group, then you would need to be prepared to do so with other groups, I would think, to be fair.

Mr Wiseman: I believe last Wednesday we had another request along this line, and I think that if they just send in any other correspondence that they might have regarding their concerns, we could review those or have our staff review them. I do not think it has ever been customary to have more presentations when we get into clause-by-clause, even though I know the government members would love to have them.

The Chairman: Yes. That is because there are major amendments made to the bill; that is why they are coming at us this way, quite frankly.

Mrs Stoner: I think it is appropriate that we read their comments, but I do not think we should start the hearing process all over again. Clearly, they know where we are with the bill and with the amendments and certainly we would appreciate having their perspective on those amendments.

The Chairman: Okay. Are there any other comments on it? Do I understand from the members then that I should ask the clerk to respond to the United Food and Commercial Workers International Union—

Miss Martel: Sorry. I was not finished.

The Chairman: I am sorry; I thought you were.

Miss Martel: Let me point out the difficulty we have as a committee, and that is that the particular area that the UFCW and Mr Koskie etc want to

Miss Martel

R-1540-2

2

5 July 1989

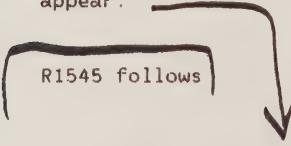
deal with was not part of the bill that this committee took out on public hearings. I think that puts them in a position that is substantially different from any other group that would want to return to this committee to make comments on particular sections of it or who felt they did not have enough time during the course of the public hearings to make the kind of comments they wanted to make while they had the group before them.

We are in a real dilemma in that we now have a group which, having seen the minister's latest round of amendments, and knowing that these were not in the original bill, should be afforded the opportunity to deal with this committee in terms of their concerns and how they feel the legislation should either be changed or that section dropped completely in order to respond to their concerns.

I point out to the committee as well that by only accepting written briefs and allowing these people to make their comments in that way, we do not afford them the same opportunity as we did those groups that came before us, that is, sometimes or often a very lively question-and-answer period wherein committee members could ask questions on whatever they did not understand and get a response from those groups that are most knowledgeable in that particular section of legislation etc. I do think that we are in a dilemma as a committee because this group, rightly so, wishes to come before us because they are viewing an entirely new section which they feel will have tremendous impact on them. They are not afforded an opportunity of a question-and-answer period if they just direct this to us in written form. So I do think it is something the committee should step back and consider again, because I think what we are going to do is cause even more anguish than is already out there, and there is a lot of it out there.

The Chairman: Before you go any further, Miss Martel, if there was a consensus by everyone on a course of action, we could just deal with it, but if there is not total agreement—and that is fine—then the committee should have a motion put before it—the proper way to respond to these groups, particularly, the UFCW. So I would need a motion indicating that you, if I hear you correctly, wish to respond in the affirmative and invite them to appear.

R1545 follows



The Chairman: Miss Martel moves that the committee respond positively to a request made by Mr Evans of the United Food and Commercial Workers International Union and that we allow them no more time than any other group had with us during the course of public hearings but that we allow this group time before our committee to state their concerns with this new section that the minister has introduced only recently.

Miss Martel, do you wish to speak further to your motion?

Miss Martel: Only to say that I think it is important that we deal with some of their concerns. I for one am not well informed at all about multibenefit plans; I am the first to admit it. Even after speaking with Mr ??Koskie over the phone about his concerns, I was at a bit of a loss in some of the areas he talked about because I do not have a full appreciation of it. I for one would certainly like these people here before us because this is a particular situation that they are faced with.

The Chairman: Okay. Because there is now a motion before us, are there any other comments on Miss Martel's motion?

Mr Wiseman: I missed out maybe on why Shelley felt that these people could not have got a brief into us earlier.

Miss Martel: Do you want me to explain?

The Chairman: Yes.

Miss Martel: To respond, the section they are concerned about is the section that was moved by the minister only—it seems to me it was some two weeks ago. It was a new section under section 3, ??subsection ??5b(2). Excuse me. That section was moved when the minister brought forward his latest round of amendments to this committee somewhere at the end or beginning of June. This particular section was not part of the bill that was taken out on public hearings when this committee held public hearings. They would have never had any chance to comment on it because it is new.

The Chairman: In other words, it became part of the bill after they had made their presentation.

Mrs Stoner: There certainly is a perspective that we did not have, because this is an amendment. I will not be supporting Miss Martel's motion because I do not think it is appropriate to open again for delegations. But I do think that it would be important to have Mr Clarke or somebody from the ministry review the comments with respect to this particular amendment and perhaps comment on them. It may be that they are prepared to do that at this point. Certainly we want to ensure that, in making our decisions, that all perspectives are taken into consideration, but I cannot support the motion.

Mr Lipsett: I can understand what is being presented. I think we are able to understand the information from the written briefs and the package of amendments that was brought forward after the public hearings was in response to those public hearings, and I think we have acted very responsibly in that manner in whole. I think we need to proceed with our clause-by-clause and therefore I will not support this resolution.

Miss Martel: That is too bad. I appreciate what Mr Lipsett has said,




that some of the amendments brought forward by the minister were in response to comments raised during the course of public hearings. I suggest to all members that this was not something that was raised during the course of the public hearings in any way, shape or form. It was not part of the original bill. It did not come about because of comments that people raised either with deeming or the ceilings, etc. It is a completely new provision which no one—I stress—no one from either side has had the opportunity to deal with. If members do not believe it, they should go back and look through the presentations that were made.

Second, I do not mind if Mr Clarke gives us his analysis; I suggest the problem we are going to be into is that the groups which want to appear before us do not agree with the proposal that is before us and they want it withdrawn. I would be very reluctant to accept only Mr Clarke's analysis on behalf of the ministry because the ministry wants this particular provision; it is as simple as that. I do suggest that we should hear from the other side and not only the ministry's side to find out exactly why those groups have concerns and want that section either amended or withdrawn completely.

Mr Wiseman: I have some sympathy with Shelley, but having sat around here, like you, Mr Chairman, for a long time—when we get this far along, to clause-by-clause, I think we would be wrong to bring in a group, even though it has been left out. I thought Norah's idea of having Mr Clarke review it in perhaps the first part of the week, because it looks

R1550 follows



(Mr Wiseman)

~~...and going, when you get this far along to clause by clause, I think we~~  
~~...and going, when you get this far along to clause by clause, I think we~~  
~~...and going, when you get this far along to clause by clause, I think we~~  
~~...and going, when you get this far along to clause by clause, I think we~~  
~~...and going, when you get this far along to clause by clause, I think we~~  
as if we will still be here the first part of the week, to start off, maybe, with his comments, or how the ministry would, maybe, change things again to make an amendment to bring in their concerns. I think we could get around it that way and, perhaps, hear from them if they are satisfied with Mr Clarke's analysis and what he thinks the ministry should be doing, or the minister, or the parliamentary assistant.

1550

The Chairman: Anyone else? Mrs Sullivan.

Mrs Sullivan: Thank you. I would like to correct a couple of impressions. One is that this amendment came out of nowhere. Indeed, it did come out of our hearings and, I believe, representatives of the building trades, themselves, spoke with some concern about the matter of the multi-employer benefit plans and the fact that the legislation as it was drafted now would, indeed, require the employers to pay twice for the same benefits coverage. That was put very clearly to us at the hearings on a couple of occasions and, indeed, on one occasion I asked the question in hearings as to whether similar multi-employer plans existed in the transportation industry, while different interveners were before us.

At that point in the hearings, of course, both members of the committee and ministry officials were very interested in the comments that were put before us. The amendments came not from a vacuum, but as a direct result of the hearings. They, as well, have taken into account the situation that exists in terms of the multi-employer benefit plans with the employer contributions forming the basis of the pool. Indeed, subsequent to the tabling of the amendments, the minister met in an amendment briefing with the members of the Ontario Federation of Labour and the building trades to have briefings on the amendment. That was about 25 May when they were tabled and I find it surprising that, indeed, the request is being made now that we are well into July.

In my view, there has certainly been adequate consideration of the concerns that were raised and the amendment deals with them. The matter has been raised publicly, it has been dealt with as a direct result of our committee hearings. Thank you.

Miss Martel: I have a question for the parliamentary assistant. I seem to gather from what she told me that the Ontario Federation of Labour was given the package of amendments before it was introduced in this committee by the minister?

Mrs Sullivan: The same night. The same night that the amendments were brought before the committee, there was a briefing meeting with the OFL.

Miss Martel: So it was a briefing after the amendments were drawn up. They were not party to the drawing up of those amendments?

Mrs Sullivan: It was a briefing meeting relating to the amendments.


6

Miss Martel: Okay, but they were already drawn up, so in point of fact, the position of ??UFCW on this, or the entire group that is listed here, who are represented by the lawyer who wanted to make the brief, any of their concerns were not taken into account before that particular amendment was drawn up. We are hearing about it now after the fact because they have had a chance to review the amendment. They were not consulted before it was put into place and presented here in this committee some five weeks ago.

Mrs Sullivan: I do not want to get into the substance of the amendment until we are at that session. Indeed, the amendments that have been put forward have been in direct response to the material that was put before us when we were in the public-hearing phase of the committee work on Bill 162.

Miss Martel: If I may, just in conclusion on my part, it seems to me they were an indirect response to the employer's concerns and this committee has yet to hear or look seriously at what the concerns are from the other side. I would suggest strenuously to this committee that all the response does was to respond to some of the concerns that the employers have and it is not a question of double billing as we will see when we get into it. But I think it is a shame that we should suggest here that what appears in this bill in this particular section is a response to public hearings. It was a response to only one side and we have yet to hear the other side and their concerns and why they feel that section should be withdrawn and that is why I feel they should have their say before us as well. In any event, it is going to be defeated, so I will let it go.

R-1555 follows







The Chairman: We shall come back into session. The motion was moved by Miss Martel, is it clearly understood? Do you wish it repeated?

All those in favour of Miss Martel's motion, on a recorded vote? All those in favour will please say "aye."

Ayes

Miss Martel, Mr Wildman.

The Chairman: All those opposed will please say "nay."

Nays

Mr Brown, Mr McGuigan, Mr Lipsett, Mrs Stoner, Mrs Sullivan, Mr Tatham, Mr Wiseman.

Motion is negatived.

The Chairman: When the committee adjourned last Thursday, I understand that we were dealing with Miss Martel's motion to amend the motion by Mr Dietsch. Miss Martel was indeed speaking on that motion when the committee adjourned. I do not know if she had finished or not.

Miss Martel: Let me begin by saying that I am sorry Mr Dietsch is not here today because I am going to respond to a little bit of what he said. Members will recall that last Thursday, my colleague from Lake Nipigon (Mr Pouliot), who is not here, and I moved that what we should do in this particular section concerning penalties was replace the word "may" with the word "shall."

It was our opinion that that was the only way we were going to ensure that there was an obligation put on to any employer who, under this section, did not pay his share for the employee's benefits. It seems to me that in some of the comments that were raised by Mr Dietsch in particular who, I assume, was speaking on behalf of the government members on this particular issue. He was quite appalled that we would suggest that any employer would purposely not pay this particular benefit or indeed any benefit. He was quite appalled by this and reminded members that they, in fact, were elected and represented both workers and employers etc and went on at great length about how he was so appalled.

Mr Wildman: ??

Miss Martel: That was my next point. I do not know where Mr Dietch is living. I cannot figure this out; I hope that he gets out of dreamland soon because anyone who has done any amount of representation of behalf of injured workers—and I know our office has and that long before I was a member. More often than not, many of the problem we encountered were exactly that, the employer, under part, failed to provide the board with information at the time of the worker's accident and failed to provide information about earnings. The employer had a habit of always making a note to the board or calling the board and saying they disputed the history of the accident so that a full investigation resulted. The worker was left for weeks on end without any benefits while the board carried on some kind of hocus-pocus investigation when they never should have had an investigation at all.


Miss Martel

R-1615-2

9

5 July 1989

I made the point on Thursday that it had been my experience, as an employee of the board, that on many occasions, even a simple thing of the employer sending a report of accident on behalf of the board, on behalf of the employee to the board was delayed or never appeared and would end up happening now. All that time, the worker was left without benefits until the employer got his act together and sent in a form saying that the worker had been hurt in employment and yes he was aware of the accident; and yes Joe Smith and anyone else was a witness to it and the man should receive compensation.

  
R-1620-1 follows



(Miss Martel)

1620

Let me point out to members again that in the act under section 121 there is a section pertaining to the reporting of an accident. The employer is supposed to, within three days of learning of the accident, submit to the board a sheet pointing out a number of things: (a) the nature of the accident, (b) the time when the accident occurred, (c) the address and name of the worker injured, (d) the place where the accident happened, (e) the name and address of the physician who attended to the worker at the time of the accident, and any other details. I should point out that the earnings are also submitted on this form.

The second section, after it says the employer should do this within three days, says that for every contravention of subsection 1, the employer is guilty of an offence and on conviction is liable to a fine of not more than \$200.

Let me use this particular example to point out why I think it is imperative that the word "may" should be replaced with the word "shall."

In the time that I worked at the board for some eight months in a position where I dealt with receiving these kinds of accident reports, Inco Ltd, for example, was late on many, many occasions, many times beyond three days of the report of the accident. The interesting thing to note was that Inco's compensation office was two floors above the Workers' Compensation Board office in Sudbury; so you did not have very far to go to submit an accident report on behalf of an employee.

Many, many times, I was in the position of getting a call from a worker who said: "I've been hurt. It's been a week, six days; I have not heard anything. Who is handling my case? What's happening to my claim?" I would go and find out that, sure enough, the employer had not filed a report pointing out that the worker had been injured. When I used to call upstairs to find out where the report was, very often the employer knew nothing about it. They would have to get a hold of the supervisor in that area to get the details and send something down to me. By the time we finished fooling around waiting for an accident report, even though it came from upstairs downstairs, you could guarantee that the worker would be sitting for two weeks, sometimes more, before he began to receive cheques. That was for a legitimate accident that the employer was not questioning.

Never in my time at the board was Inco ever handed a penalty of \$200 for late reporting. Inco is not the only case. Usually I did not have a problem dealing with Inco; once they found out, they hustled their butts to get something in. But I can tell you that it does happen, and it happens frequently. I have yet to see the board in my time there, on any of my cases, ever fined or ever levied a penalty.

Miss Martel

R-1620-2

11

5 July 1989

I am using Inco, but there were other employers who purposely did not submit their accident reports. I had a case of a young kid, an 18-year-old, who was working at a gas bar and got hurt over Christmas. He had been working in that employ part-time since September and was going to school full-time as well. The employer, even though I had her on the phone, absolutely refused to submit an accident report when that young man was hurt. He contacted me two weeks after he had been off and had not received a cheque and wondered what was happening. That employer absolutely refused and never did, to my knowledge, submit an accident report, nor was that employer ever fined by the board, even though under the statute they are supposed to submit something within three days; they are supposed to be fined \$200 if that is not carried out.

The point I want to make—and I am really sorry Mr Dietsch is not here—is that I think I have every legitimate reason to believe there will be employers who will abuse it. I hate to say that, but that is the truth. That is my experience having worked at the Workers' Compensation Board. It is also my experience as someone who does casework on behalf of injured workers and who sees the result of the problems.

We have a number of employers now who for every single worker who gets hurt automatically call the compensation board and say they want the claim investigated because they do not believe the person got hurt in their employ, they do not believe he got hurt at work but that he got hurt at home—he fell off the roof; you name it and you hear it. Members of the committee should recall that when we were in Timmins, one of the paper workers' unions said that now every claime they have the employer contests. They had 14 in a row that had been contested. What that means is that every single one of those employers is not receiving a penalty until the board actually goes out and investigates the claims.

~~Carrying on from that~~

R1625 follows



(Miss Martel)

~~One of the paper workers' unions said that now every claim they have is~~  
~~being investigated by the board. The board is not receiving a penalty~~  
~~because the board is not receiving a penalty.~~

Just carrying on from that, members should recognize the great delays that are inherent when an employer does that kind of thing. He does it for very many frivolous reasons in some of the cases we have seen. That means the board has to send an investigator out. Right now, at the Workers' Compensation Board they are three months behind in having their investigators go out and investigate a claim. That means our Joe Smith sits for three months without a penny. When he calls us, we tell him he better get to welfare and very quickly because his claim is now going to be looked at in the near future. After it is all said and done, the claim is usually allowed, but we have an employer who has used the right that he has under the act to protest and to demand an investigation and the worker is left hanging from there.

It is my opinion that in many sections of this bill, the onus is on the worker, "The worker will do this and the worker will do that." It disturbs me to no end to see that when it comes to an obligation on the part of the employer, "The board may..." or "The employer may..." I think that if we are going to be serious about obliging the employer to fulfil his obligations, then that word should be changed to "shall."

Let me just tie that in to what section 4 says because I know the parliamentary assistant in here said that, in any event, even if the employer does not pay his share, in the end, when the whole case is sorted out, the worker will receive back any money he has lost because of the employer's negligence. That is fine and dandy and that should happen in any event, but I still fail to see what kind of obligation there is then on the employer to carry out his obligations immediately when a worker is injured.

If the employer is fully aware that in the end he will pick up the loss, it is not going to matter to him a whole lot, or to some employers, whether he submits any evidence on behalf of the worker, whether he pays or not, because if the board comes and knocks on their door and says, "Why have you not held up your responsibility or become responsible in holding up your end, the employer is in the position of saying, "I forgot. I missed it. I did not know he was off," one thing after another. All he does is pick up paying from there, but there is no reimbursement for the loss on the part of the worker in terms of the long amount of time he might wait before the employer finally picks up on his obligations and makes the payments he is supposed to make from the time that the injured worker is actually off the job.

As I say, I think what we are moving is quite reasonable. We are trying to ensure that in fact the employers recognize that this is an obligation. It is obligation from the time the worker is hurt and goes off the job. It is not an issue they should be fooling around with, but indeed a responsibility they should have to assume as soon as that worker is off. We have tried to say that yes, there may be cases where there is an oversight, and certainly the board, as it even says in this section, who goes in to find out if an employer has complied, will find out quite quickly if it indeed is an oversight or if the employer is legitimately being obstinate and has no intention whatsoever of making his payments.

I am sure the board will be able to make some determination as to whether it is an oversight or it is an employer who is completely unwilling to abide by his obligations, but I think when you leave it wide open and you give that kind of discretion to the board, you are going to have employers (a) abusing it, and (b) a board that is very unwilling to fine employers.

I just go back to my past experiences with the board even in terms of accident reports and I tell you again, I never saw any fines against any employers when I was there in spite of all the grief that was caused and in spite of the fact that they did not live up to the letter of the obligations outlined under the act.

That is part of what I wanted to say. I know my colleague the member for Algoma will want to add a few comments in this regard as well.

Mr Wildman: It is nice to be back.

Interjections.

Mr Wildman: I did not hear the debate on Thursday last because I left—

Interjection.

Mr Wildman: —but this amendment proposed by my colleague certainly appears to me to be most reasonable.

We are concerned about the amount of discretion given the board in this bill proposed by the minister, and this is one more example of discretion being given to the board. That is why we believe that the word "may" should be changed to "shall."

~~My experience, and I am sure other members will have this~~

R-1630 follows

(Mr Wildman)

1630

In my experience, and I am sure other members will share this experience, employers and, for that matter, employees too run the whole gamut. I mean there are employers who meet their obligations and some who ever go beyond their obligations on behalf of their employees, but there are others who try to circumvent their obligations and to avoid them, if possible.

I can think of an example, for instance, on the one hand, Algoma ore division a few years ago where there was a severe accident, almost a fatal accident, involving the fall of ??loose where a young man in his early 30s with a young family was lucky to survive. He spent about six months in the hospital, and because of a particular quirk in the regulations in calculating his pay, this individual, who was never going to be able to work underground again for his whole life, was going to have his benefits calculated on a much lower rate of pay than he really should have been entitled to. I will not go into the details of it, but in that particular case Algoma ore division management went to bat for this worker and appealed or supported the appeal of the worker because they felt that this individual deserved a higher rate of benefits even though it would obviously affect their assessment. That is one example of an employer who acted responsibly—more than responsibly—on behalf of his employer. We were happy eventually, through the co-operation of myself and the worker and the company, to be able to persuade the board to recalculate this man's benefits so that his pension eventually would be somewhat more adequate to help him support his family and eventually he got rehabilitation and so on.

There are the other extremes. My colleague has mentioned a few. I will not mention individual employers, but I do know of occasions where I have run into situations where an employer will not even send in form 7, will not report an accident, refuses to acknowledge that an accident even occurred. There are other occasions where an employer, particularly in unorganized plants or workshops or places of employment, will coerce the employee into not reporting the accident, not reporting to workers' compensation, just going on so-called light duty, sitting some place twiddling his thumbs until he recovers substantially and just making medical claims on the Ontario health insurance plan. I mean I have record of that.

We have had the case, which was raised by one of my colleagues, the member for Lake Nipigon (Mr Pouliot), in the House of a worker who could not get benefits from the Workers' Compensation Board, and after some investigation, he found that this worker, according to the records provided to the board by the employer, was in management. When he did further examination in this particular worksite, there were something like four or five workers on the worksite and something over 30 management people, according to the employer's records.

We have had other cases where the employer will sustain one claim to the Workers' Compensation Board, but if the worker is unfortunate enough to have another claim, that is it, "Goodbye. You are out. You are gone. You are out the door. We do not want you any more." We have had many cases where employers have disputed a worker's employment record as to how long this employee has worked for the company and what their rates of pay were and what their benefits were and so on.

Mr Wildman


R-1630-2

15

5 July 1989

There are many situations where employers have failed to meet their obligations. I recognize there are many employers who do meet their obligations, but the purpose of this amendment is to deal with those employers who intentionally try to circumvent the act. In this case we are dealing in this section with a penalty.

R-1635 follows





(Mr Wildman)

~~but the purpose of this amendment is to deal with those employers who intentionally try to circumvent the act. In this case, we are dealing with this section with a penalty clause, a clause that says the board may levy a penalty, and we believe the board should be required to levy a penalty if it can be shown that the employer has intentionally tried to avoid giving the employee the benefits for the one year, the contributions that the clause requires.~~

It has been suggested that perhaps the employer might not meet his or her obligations through some lack of knowledge or error rather than simply attempting to purposely avoid meeting his or her obligations. In that kind of a situation, I think it is quite conceivable, quite acceptable, for us either to work into the bill or for the ministry, or the board I suppose because the board is going to be setting the regulations, the board to work into the regulations, when and if this bill passes into law, a system where the employer could appeal. If the board decided that the employer had intentionally attempted to avoid giving the benefits that are required under this section and had said, "We are going to levy a penalty against this company, this employer," then we would not have any objections on our side at all for a system to be set up where the employer could appeal that decision of the board, just as a worker can appeal a decision of the board that he or she disagrees with.

We are attempting to do two things: Take the discretion away from the board, and we make no apologies for that. We do not like the way the board historically has exercised its discretion where it has discretion, because inevitably, in our view, that discretion has been used in such a way that it has been detrimental to workers.

Second, we want to ensure that employers know that the government of this province is serious when it says, "There will be a penalty if you do meet your obligations." Not that the board might levy a penalty, but that the board will, "So you better meet your obligations. It is your responsibility as an employer, as a company doing business in this province, to know what your obligations are and to comply with them." For those reasons, I think it is most sensible that "may" be changed to "shall," that the discretion be removed from the board and that it be made clear to employers in Ontario that they must meet their obligations under this section if this act, unfortunately, is passed into law, and if they do not, and if this bill becomes law, they will face automatic penalty.

The Chairman: Thank you, Mr Wildman. You have stimulated Mr McGuigan.

Mr McGuigan: I would just like to begin by giving my own experience as an employer; a small business on an average about 20 people throughout the year, but it varied from five or six in the wintertime to as high as 200 in the summertime.

While I had an accountant do my bookkeeping and that sort of work, I personally did all of the compliance things, such as workers' compensation and things of that nature, complying with government regulations. I think only once or twice I might have been tardy in making a report. I guess it would be the case the person went to a doctor and the doctor reported it to the Workers' Compensation Board and it reported back to me with a letter that sort

1640  
follows

(Mr McGuigan)

they will be reported to the workers' compensation board if I did not make the report which I darn well did as soon as I got that report and all.

1640

I guess what Miss Martel is telling us is that if I had chosen to ignore that, nothing would have happened. I do not think that would have changed my reaction because I was never one to try and retort the board whatsoever. I did have one serious accident which affected me deeply personally. The person made a full recovery but nevertheless it is one of the reasons for which I have been glad to serve on these workers' compensation committees and the health and safety investigation we did on the mines.

I am very sympathetic to the problems that Miss Martel is bringing us. I have no sympathy whatsoever with firms or people that would deliberately try to sort to the legitimate benefits of workers. This strikes me, I think the government has recognized that, in bringing in the amendment to which Miss Martel is bringing in further amendments. It seems to me they are recognizing the weakness in the past act in that regard. It has put a very serious penalty on people who retort that.

I do believe that in this case, and in many cases, similar legislation, that you have to leave some discretion with the people who are administering the act. Otherwise, you do not need a board to make decisions. You simply turn it over to a policeman to run the affair and you could do away with a board unless you are going to give that board some discretion because every case is different.

As Mr Wildman has pointed out, not all employers are ogres and mistakes are made. There is such a simple thing as the mail delivering things and since we are dealing with humans all of us at whatever level are capable of inadvertence and papers being lost and all of these sort of things.

So, I am encouraged, on the part of the workers affected by this, that the government has brought in this amendment and that it is the word "may." It is certainly my belief that the government would not have brought force this amendment if it did not intend to see that it was carried out in the spirit of the law. Therefore I am very happy and proud to support the government amendment and I do not think it needs that further amendment which would take away unnecessary discretion. That concludes my comments.

Mr Lipsett: I have listened very carefully to the debate and it is focused primarily on the obligations of the employer this afternoon. Indeed the amendment that we have before us—it has been introduced by Mr Dietsch and then amended by Miss Martel—has focused on that area whereas in fact the total amendment is to spell out the empowerment of the board.

I think that it does that quite well and that the amendment that has been placed before us is appropriate in this case. I do not think that we are trying to present an act to be the judge in this situation, we are only presenting an empowerment for the board to act on the obligations of the employer. I think that that amendment, as presented by Mr Dietsch, does it quite adequately. So I will be supporting the original motion and will not be

1645 Follows

(Mr McClelland)

able to support the amendment to the motion.

The Chairman: Any other comments from the members? If not are you—Miss Martel.

Miss Martel: Thank you, I will be brief. The thing that comes back to mind, again and again, during the course of the public hearings was how many times we heard from both sides, employers and workers, about how much discretion was in the present act, how much discretion was in word policy, which was the way the board decided they would interpret the act, whether or not that undermined the spirit of the legislation. They only have to go back to the whole policy on supplement and the deeming to point out that those kinds of provisions we never the intentions of members when that act was passed. Certainly, the board took it upon itself, under its mandate of being able to determine policy, to do whatever they wanted, to whoever they wanted. This particular minister has not tried to curb that excessive power in any way, shape or form.

My overwhelming concern with the bill is there are many areas where the board is given even more power to do whatever it wants. There is absolutely no control by this minister, this government or any of us as MPPs over that. Not only the entire section 20, where they are given at least 13 or 14 specific areas, but throughout the bill, there are all kinds of areas where the board may decide who get the rehabilitation. The board decides what that rehabilitation is going to be, which classes are going to be exempt from reinstatement. It goes on and on and on.

It seems to me that, again and again, from people who came from both sides of this situation—employers as well—said, "If you are going to do anything, you have to curb the discretionary power of the board. You cannot have a set of rules that appears in legislation that we try and deal with as representatives and the whole internal set of rules, called policy manuals, that the board deals with which we have no access to and gives them free reign when it comes to derminining entitlement on the side of worker and liability and premiums on the side of employers."

For the life of me, I cannot understand why we would not then try and adhere to some of that in those areas where the board should not be given discretionary power. We would not try and curb that. I think Mr Wildman has pointed out that like any other provision under this act there is an appeal system in place. Now, I hate using the appeal system because it goes on and on and on and it is two years to get to Workers's Compensation Appeals Tribunal now. However, it is in place and if we have no other alternative then that is the route that all of us have to take when we represent either workers or when employers are being represented as well. What he has laid out before us is that in fact there is a mechanism in place to catch those areas where in fact the employer, through fault of his own, may in fact have not submitted or done what he was suppose to do on behalf of the worker therefore causing some grief on the worker's side. He certainly shall have his day and he certainly can call the adjudicator handling the case and outline that is the adjudicator is adamant that the should be fine then he can certainly appeal that decisions as can any worker appeal any adverse decision that affects them now.

So we have put into place a mechanism to curb what may well be unjust



Miss Martel

R-1645-2

19

5 July 1989

decisions against the employer. I think the employers would recognize they can use that route too. What we are trying to do is ensure that those employers who, out and out, refuse to be responsible or look after their obligations in this particular section, they will suffer a penalty. It is not enough to say you have an obligation, but if you come before us and you tell us that it has been an error then we will not fine you or even if you out and out refuse we will not fine you. That is what we allowing to happen under this particular section.

Now I know Mr McGuigan has said that it is the intent of the ministry to make sure this obligation is upheld and that is fine. The problem is that once this goes of ministry hands and over to the board, any sentiments or any sense that the ministry wanted in this regard can be very quickly undone by the discretion allowed at the board.

If you are going to put into place a legislation that reflects the intent of MPPs, then we should do that. If we want to ensure the employer has an obligation then we should put that in writing. The way it appears here I am afraid that the board is just one more area where the board has total discretion and it is one more area where I think employers are going to run some employers not all—rough shot right over that whole provision and the obligation will mean nothing.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
(L-1650-1 follows)



1650

Mr McGuigan: I do not in any way blame Miss Martel or members of the opposition for judging the board on the basis of what happened in the past, that is only a natural thing to do, but I think you are missing the point. When this ruling is put in place, the board no longer has that complete freedom to make those choices because any person can point out, "Look, you have the authority to do this, the act says that you may do this." In saying you "may" do this, there is also implied that you "must" do it unless there are pretty extenuating circumstances. I think you are missing that change in the act.

I think if any one of us were sitting there as a board member and the board decided, "Well, we are not going to prosecute anybody," it seems to me, then, a board member really becomes almost personally liable for ignoring a clear piece of direction that is in the act.

All we have with this act, if it passes, is that it is not automatic that the board has the power to look at the circumstances. Again, going back to my circumstances where, say, I was a week late. If you take out the word "may", I would have automatically got a year's penalty. It was not my record over the years that I failed to put these things, it was not my intention. Maybe I did it once or twice, working night and day in the seasonal business, I might have done it once or twice. But if you take out the word "may", I would automatically get a year's penalty. I do not think you want to see that either. That is all.

The Chairman: Thank you. You, in turn, have stimulated Mr Wildman.

Mr Wildman: I will just respond briefly. It seems to me that my good friend, Mr McGuigan, is attempting to have it both ways, and I do not mean that in any kind of vindictive sense. If "must" means "may", then why the objection to "must". Or if "may" means "must". If you think they mean the same thing, then why are you objecting to it? I do not think they mean the same thing. I think that when it says "may", it means "may", and that the board "may" or "may not" levy a penalty. I think that for administrative purposes, not with any ulterior motive, particularly, but for administrative purposes, the board might decide that they would not exercise this power to levy a penalty unless, for instance, it were done regularly by an employer. That is, if the employer could be shown to have on more than one occasion— In other words, they could do it once but they would not get it, but it might be if they have done it more.

Or, the board might decide that it would have to be a gross violation. In other words, it would have to be shown that the employer was intentionally attempting to violate the act. So, for administrative purposes, to make it easier for the board, as well as easier for the employer, they might decide to exercise their discretion under this subsection and not levy a penalty.

Mr McGuigan: That is true; but with this now in place, they would have a position that they would have to defend. They did not have to defend it

Mr. McGuigan

R-1650-2

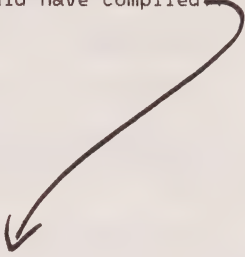
21

5 July 1989

before.

Mr Wildman: I think that "may" gives them the discretion not to do it and you say they would have to defend it. Well, I do not really want to put them in that kind of a situation. I want the employer to know that he or she must comply and if they do not, they will have a penalty levied against them. Again, I reiterate, I will not go on at any length on this, that it is quite conceivable that if the employer thought they had been unjustly penalized, that the employer could appeal and explain that there were extenuating circumstances, that there was some reason or set of reasons why they were unable to comply and if they had their druthers they would have complied.

R-1655 follows



(Mr Wildman)

Fine. They might win the appeal and they would not have this penalty. Certainly administratively it gives them a problem because they have to go through the appeal process and so on, but just the knowledge that they might face a penalty and might have to go through an appeal I think would be an incentive for the employer to ensure that the employer complied.

Mr McGuigan: I think we have pretty well laid down—

The Chairman: We have heard the arguments, yes.

Miss Martel: I would ?? one other thing that Mr McGuigan said and it goes back to the experience that I have tried to bring out for the reasoning behind why I am moving this section.

If I go back to the section of the employer's obligation to send in an accident report within three days—and that is clearly stated in the act. It clearly says three days—the penalty clause or the offence section reads quite clearly, ??"For every contravention of subsection 1, the employer is guilty of an offence and, on conviction, is liable to a fine of not more than \$200." As I read that, the penalty in that section is very clear. If the employer does not get a report of accident on the part of his employee into the board within three days, he will be penalized \$200. That is my reading. It is not "may," "might" or whatever. It is very clear. He is liable. He will have to pay.

I go back to the point that in my time at the board, even though the three days was abused again and again, and maybe not even purposely, I never ever saw an employer being fine. The act clearly says he will be fine, not he may be fined. It seems to me that the board is already wielding some tremendous discretion by totally ignoring what the present act says now in relation to reports of accident and is not in fact fining people.

I do not expect the board's attitude to change if we now even open the door further and put in the word "may" instead of "shall." I think what we are going to see is the same thing continuing merrily along its way and the board in fact once again exercising its discretionary power. We are trying to catch those employers who purposefully and wilfully do not want to shoulder their obligations under this section.

We are not out to grab every employer. As Mr Wildman has said, it would be, just as workers from their side, when they are denied benefits or denied compensation, have to appeal, then the mechanism would be put in place for the employer to do the same and state his very legitimate reasons why he was unable to pay his share in time or whatever happened, but I do think that if you leave that kind of discretion to the board, it has already been shown that it has been abused in the case where the legislation says clearly there should be a fine and there will be a fine. If you leave it like this, it is just going to open the door even further to them. That is what I am trying to control, some of the broad discretion that the board has.

Mr McGuigan: I share your same objective. I guess we just disagree on the method.

The Chairman: Okay. Any other comments? Are members ready for the question on Miss Martel's motion?

Mr Wildman: No, Mr Chairman. I have to consult before the vote.

The Chairman: All right. Then we shall have the vote at—

Mr Wildman: Twenty minutes.

The Chairman: Yes—at 5:17 pm. We are recessed until 5:17 pm.

The committee recessed at 1657.

1715  
follows





1718

The Chairman: The committee is back in session. Miss Martel's on ??subsection 5a(3).

Miss Martel: Recorded vote.

Interjections.

The committee divided on Miss Martel's motion on ??subsection 5a(3), which was negatived on the following vote:

Ayes

Marland, Martel, Wildman.

Nays

Brown, Lipsett, McGuigan, Stoner, Sullivan, Tatham.

Ayes 3; nays 6.

Mr Wildman: Mr Chairman, would it be in order to move a motion that the word may be changed to "will"?

The Chairman: No. We are proceeding on ??subsection 5a(3).

Miss Martel: ?? a reason why?

The Chairman: Members have had an opportunity to debate down to the end of the penalty clause, subsection 5a(3). We then presumably move to the liability for loss by injured workers, subsection 5a(4). Any comments on—

Interjections.

Miss Martel: No, no.

The Chairman: Oh.

Miss Martel: You are going a little too fast, Mr Chairman.

The Chairman: I realize the pace is a bit reckless, but Miss Martel.

Miss Martel: Yes, you are a little bit ahead and perhaps I should have showed you our next motion, but in any event let me just point out to the committee what we want to deal with next in that particular section, in the penalty section.

It concerns the clause "to a maximum of" and it points out that ?? "The board may levy a penalty—

Interjection.

Miss Martel: Yes, I am going to ??—"...may levy a penalty to a maximum of the amount of a year's contribution." We would like to change that and we have a new motion. I will read it into the record and we have the

(1720 follows)

(Miss Martel)

1720

copies made already.

The Chairman: Miss Martel moves that subsection 5a(3) of the act, as set out in Mr Dietsch's motion to replace section 3 of the bill, be amended by striking out "to a maximum" in the third line.

The amendment is in order. Do you wish to speak to your proposed amendment.

Miss Martel: Yes, I do.

We recognize that the government's intention in this whole section is to, for the first time ever, put in place some type of obligation on the employer to provide employer benefits and those benefits, as we have seen during the course of the discussion on this section, include pension benefits, life insurance benefits and health care benefits, whatever they may be.

Members on the government side have repeatedly said this is a new provision, which we have not seen before, and that is true. It is their hope that under the penalty section that employers may be convinced that they should in fact comply with the obligations as set out in this section.

In the last motion that we dealt with we tried to impress upon the committee members that we should change that "may" to "shall" in order to ensure the penalty would be placed on the employer and he would in fact be encouraged to comply rather than perhaps not comply, only until such time as he was caught by the Workers' Compensation Board.

What we would like to do is, in the case that a penalty is going to be levied, in the case that the board, after it makes its investigation of the whole case and the scenario and whatever reasons the employer gives for not complying with that section, in the event that the board comes to the conclusion that it must in fact fine the employer because he has out and out refused to make his or her contributions, then we think the amount of the penalty should in fact be a maximum of what the contributions would have been in respect of the worker.

As I read that particular section now, it seems to me that the board would be applying some kind of scale. We do not know that because it is not outlined here, but the board in fact would be in a position to put in place some kind of scale up to the maximum that the employee would have had had he the contributions been made for the entire year. It can be a very low amount, a medium penalty or a penalty in fact right to the maximum amount.

What I am encouraging members in this particular regard is this, given that the section only says "may" at present, it is going to take a lot before the board finally determines that in fact the employer is out and out trying

Miss Martel

R-1720-2

26

5 July 1989

to avoid his obligations. Therefore, if we are serious that the employer should be responsible for his actions under this section, the penalties should be higher than a graduated scale and I am proposing that the employer in fact, if he is caught under this section and if it proven that he is indeed trying to avoid this obligation, then he should pay the maximum amount that he would have had to pay in terms of the year's contribution for his particular employee.


I think what we are looking at is when we finally get to the levying of a fine, in fact, we are going to have those employers who have had absolutely no intention whatsoever of assuming their responsibility in this regard. If that is the case, then they should be paying a penalty to reflect their complete lack of responsibility in this particular section and I think the fine that is appropriate is the maximum and not a graduated scale up to the maximum.

Mr Wildman: Miss Sullivan wanted to respond, I think.

Mrs Sullivan: No, I will wait.

Mr Wildman: One of the problems we have with dealing with quasi-judicial decision or judicial decisions is that when discretion is given sometimes you get a situation where

R-1725-1 follows



(Mr Wildman)

~~One of the problems we have in dealing with quasi-judicial decisions is that the board has discretion in imposing penalties. In some cases, very minimal penalties are levied to the point where violators see it as a cost of doing business and treat a minimal fine or penalty just something they have to endure and risk in order to be able to continue operating as they have in the past. I do not know whether this would happen in the current situation if this legislation is passed because I do not know how the board would exercise this discretion.~~

Let's say for the sake of argument that the amount of money in one year's contributions were somewhere in the neighbourhood of \$5,000 which would be substantial. If the board decided that some company intentionally tried to avoid providing the benefits required and levied a penalty of \$1,000, that would be significant even though it would not be near the total amount. However, if the board levied a penalty along the lines of the penalty for not reporting an accident, which is currently in the act—\$200—that would not be very substantial at all.

You do not have to look at a company such as Inco or Stelco with their enormous payroll, but even a smaller company. I mean nobody likes to have to shell out \$200, but it still would not be very much of a penalty. The employer might even consider it worth the risk if it became known that this was the standard penalty in these kinds of cases that the board was levying. The employer might be prepared to take that risk. If the employer was found in violation and had to pay the \$200 it would be bad luck I suppose, but it would not be something that would be very difficult for any employer to pay.

The whole purpose of this section is to try and ensure—because I read it—that employers will comply with their obligations. If you like, I think we are trying to ensure that there is significant disincentive to an employer that might try to avoid meeting those obligations. So, it might seem punitive to suggest that the total amount of employer benefits for one year be the only penalty that a board could levy. It has been suggested on occasion in dealing with quasi-judicial bodies or even the courts, that to say that the penalty will be the maximum penalty then encourages that body not to levy a penalty.

I would hope that would not be the case, but if the board is serious about applying this section then the board will be levying the penalties. I followed the argument that was previously made by Mr McGuigan, where he said in his view "may" meant the same as "shall" and that the board would have to justify why it was not levying a penalty if it decided not to. I am not sure I agree with that argument, but if that is correct—

Mr McGuigan: I have to interject. I did not say that "may" meant the same as "shall".

Mr Wildman: I am sorry. That is what I took your meaning to be. But at any rate "may" or "must" or whatever, I cannot remember the exact—

...1730 follows..



5 July 1989

1730

Mr Wildman:

board is serious about enforcing this penalty then I would hope that nobody from the board, at least, would make the argument that if the penalty is a total of one year's contributions to employee benefits the board would then forego the penalty. I would hope that the board would make it clear that they would, indeed, enforce this section and that they would levy the full year's contributions. By striking out the words "to a maximum" we are ensuring, in fact, that is the penalty and if the board is going to enforce it and would only not enforce it in a situation where it could justify not doing that, as my friend indicated earlier, then I certainly do not think it would be a disincentive for the board. It would be a significant disincentive to employers who might try to somehow avoid their obligations.

Mr McGuigan: I have not dealt with Inco, but I have dealt with large companies as a supplier to ??Dominion Stores. At that time we had a provincial inspection service. Food inspectors went to the produce counter with products I was supplying, and if they found products on the counter that were under the provincial standards these people would lay charges and bring them into court. They were very small fines that were imposed, but nevertheless it was recorded through the court system and it would be reported in the newspapers. The \$50 fine, \$100 fine or whatever, was certainly nothing to ??Dominion Stores. I am telling you, they took it very doggone seriously because they were reported as a food company having a product on their shelves that did not meet the standards.

Interjection.

Mr McGuigan: It amounted to a lot more than that, because I remember in one particular instance where they blamed me for the condition of the product. Really, our obligation as a supplier ended when it was accepted on their dock because they have inspections there within the terms of their, sort of an unspoken contract we had with them. We were responsible for 24 hours. The product could have been on their shelf or in their storage for a week before this happened, but I remember getting a letter from them after one of these events saying, "If this ever occurs again, you are absolutely finished as a supplier." No appeal, no nothing. You are finished. I was one of their favourite suppliers.

I just tell you that to tell you how these people look upon the fine. I cannot say that applies in the case of Inco, but it seems to me in an industry where they have shareholders and an industry where the quality of their product is of some concern to them and their whole labour relations and the fact that they have a staff of people who work on that; they would take it darn seriously to be fined, we will say \$200. If you are really going to hurt Inco, really make them squeal, you would probably have to fine them \$2 million

W. McGuigan


R-1730-2

29

5 July 1989

or \$5 million.

I reject the notion that a fine has no effect on a company like that. I think your rogue company, people who just do not give a damn about anything, they would perhaps regard it as a licence to carry on and pay their fine or whatever.



R-1735 follows

(Mr McGuigan)

~~regard to the~~ I certainly do not think it would have much effect on your big companies. I am reminded of that old Gilbert and Sullivan operetta. There is a line in one of the songs about, "Let the punishment fit the crime." I think in our whole judicial system we appoint judges and we give them a range of penalties to apply to people depending upon the circumstances. At times you might look at an individual judge's decision and say, "What a crazy decision," but I think as a principle we would rather have judges with discretion to look at the individual case and apply a punishment which, in their judgement, fits the crime, than have one system where automatically certain penalties are provided.

I think, too, if members opposite really believe that the word "may" is going to cause a policy to be developed of ignoring the situation, then the inclusion of an automatic fine would certainly strengthen the reason one would fully exercise or adopt the situation of "may" rather than applying it in some cases and not in others. I think that provision would strengthen the argument you were concerned about in your previous amendment.

Mr Wildman: I listened with interest to my friend's comments, and frankly I think he is mixing apples and nickel.

Mr McGuigan: They used to sell for a nickel.

Mr Wildman: It is a little bit different to be talking about a consumer product, particularly food—

Mr McGuigan: I was talking about public relations.

Mr Wildman: —as compared to something like nickel ore. Certainly I think if it became known that a marketer of food in the province had been fined because of poor quality food, that would have a significant effect on their business. I am not sure that a penalty for not complying with the Workers' Compensation Act would have the same effect even on ??Dominion Stores as a fine for poor quality food or improper quality control.

I will not mention the name of the company here, but if asked to I can validate this—there is a company in my constituency that under another act, the Occupational Health and Safety Act, has in the past, it appears, treated the prosecution process as a nuisance, but one that can be endured if it costs less than producing a safe workplace. In that particular situation two workers, two or three years separated, lost limbs because that company did not install proper lockout procedures that they were ordered to do by the Ministry of Labour inspector. In the first case the company was fined, I think, \$10,000, and in the second case the company was fined \$15,000. That was public knowledge. It was reported in the press. Everybody knew about it. The product that that company supplies is not a consumer product and I would doubt very much that, while a lot of people felt badly about it, that company's business in terms of its marketing ability, was hurt particularly, even though their public relations was hurt.

I just want to make one other comment with regard to this particular section. We have to keep in mind that here we are dealing with the Workers' Compensation Board. We are not dealing with a system that requires the

(1740 follows)

(Mr Wildman)

Keep in mind that here we are dealing with the Workers' Compensation Board. We are not dealing with a system that requires an analysis and judgement of independent judges in a judicial system. In this case, the board administers the act and also would be imposing the penalty. It is not a system where we have some independent arbiter making a decision as to the amount of the penalty but rather the board itself.

1740

The board would be having to decide on its own, based on its regulations, how to impose this. If you give them the discretion, unlike giving a discretion to an independent judge—we have seen in the past, and I say this advisedly, that that almost inevitably means that employers benefit and workers suffer.

We know, interestingly enough, that in the act it says that when there is any benefit of the doubt anywhere, the benefit of the doubt will be given to the workers. I have yet to see, in 14 years, more than once—I have seen one occasion in my experience where benefit of the doubt actually has been given to the worker. In most cases, the benefit of the doubt has gone to the employer.

We are not dealing with independent judges which will weigh the evidence and make a judicial decision. We are dealing with a board that has regulations and policies set out. Where it has been given discretion in the past, that discretion has not been used in a way that I think benefits workers.

It is only at the last stage of the appeals procedure, when you finally get to WCAT, that you have an independent tribunal hearing evidence, weighing both sides and making an independent decision. At every other stage, it is an employee of the board that is making the decisions. We have seen at WCAT, when significant decisions are made, that the corporate board reserves the right to determine, on occasion, whether or not the decision of WCAT will be implemented. So you cannot compare this to a judicial proceeding.

The person or persons who will be making the decisions on how much should be levied as a penalty inevitably will be an employee of the Workers' Compensation Board and will be bound by the regulations and policies set by the board. It is not an independent judge. For that reason, I want to ensure that they have as little discretion as possible because that discretion, when it is dependent on the policies and regulations of the board, does not benefit workers.

The Chairman: Any other comments on Miss Martel's motion?

Miss Martel: Just before the parliamentary assistant or Mr Clarke responds, I would like to have the indulgence of the committee to relate an interesting story about Inco and public relations.

Inco is up on charges right now for excessive emissions of SO<sub>2</sub>. Those emissions occurred last August and September and we received many calls about people who were extremely concerned about those emission levels.

Mr McGuigan: ?? But they are going to ??pay \$500 million.



Miss Martel: Rightly so, and they should be fined, and well fined. but the point I want to make is that they are in court right now. We have received calls again over a two-week period when the emission levels were too high once again, even though Inco is on court on the same business now. The MOE in Sudbury basically told us and our constituents that there was nothing they could do until the court proceedings were over. The company has commercials on TV right now about the environment. I do not know how much they are spending on those commercials, if any of you have seen them. They are in court now on charges and they are still pumping out excessive emissions. So for a company like that, it does not matter what you do; you are not going to win coming or going.

Mr McGuigan: But you have to admit, Shelley, that if they are committed to spending \$500 million, somehow, somebody got their attention.

The Chairman: Let's get back to the amendment. Mrs Sullivan, did you wish to comment on it?

Mrs Sullivan: Yes. I am struck by the logical inconsistency of this amendment in comparison to the amendment placed immediately prior to this one by Miss Martel. In the discussion early Thursday in our session relating to the first amendment, the use of "may" or "shall," one of the things that was brought to the attention of the committee was the need for the board to have some discretion.

R1745 follows



(Mrs Sullivan)

... the need for the board to have some discretion where there was an unintentional oversight. That was largely the rationale for maintaining the word "may" rather than "shall," which the committee has decided to do.

What we are now looking at is a situation where were, for example, one contribution for benefits coverage inadvertently left unpaid, what this amendment would do would be to require, if a penalty were levied, an entire year's contributions to be made. It seems to me that in that situation, the board would be more likely to exercise the discretion of not imposing a penalty at all rather than having the choice of imposing a penalty that is more suitable to the lack of compliance, whether it is inadvertent or specific and determined noncompliance.

As a consequence, I find that the inconsistency between the first and second amendments that have been put are such that the original wording, as it is in the government motion of amendment, is the most appropriate for the circumstances. I think I will leave it at that and perhaps we could be ready to deal with the vote.

The Chairman: Is the committee ready to deal with the vote?

Miss Martel: No.

Mr ??Wildman: No. We would like to respond.

The Chairman: You mean that Mrs Sullivan has provoked you?

Miss Martel: I am provoked. I do not know where the inconsistency comes about because what we have tried to do in both occasions is to remove the discretion from the board and to not allow the board to have any power to fool around and determine whether or not the employer was under an oversight or missed something or this, that and the other thing. We have said that if you are going to put an obligation on an employer, then you do that.

I think the inconsistency, if there is one, would be in the government's now voting for this particular amendment. Maybe that is where the problem is on the part of the government. It certainly would be inconsistent of them to vote for this at this particular time when in the previous section the same members argued that the board should be given some discretion. The only inconsistency I can see is the position the Liberals are now in on this particular section.

From the beginning, with both, we have said we that we agree this is a new benefit but that we also think that if you are going to put a benefit into place, then you oblige the employer to assume his or her responsibilities in that regard. It is our opinion that in both cases, we are leaving a great deal to the discretion of the board which, as my colleague has already pointed out, never seems to favour the worker but always seems to favour the employer.


Let me go back to what we have said, we wanted the "shall" in place of the "may" so that there would be no question that with a lack of compliance on the part of the employer, he would be served a penalty. We have said in the second case that that penalty should not be left to the discretion of the board, that it not be \$20 or \$25, but that in fact if the employer has out and

out reneged on his obligations to make the payments on behalf of the worker, then he should suffer some kind of substantial penalty for that so that he does not try to do it again and again and does not come to the point where he considers it a minor cost of doing business and it really does not affect him one way or the other.

The problem with not ensuring that you have got a substantial penalty is that employers will come to the conclusion that it is far easier to jack the worker around and to pay a small minor bit of money to the board and continue on their merry way, and in the end it is the worker who suffers from that particular situation. It is the worker, I remind members, who will be without any of the health care, life insurance or pension benefits that normally he should be receiving. It is the worker who suffers in that case and not the employer.

We have been consistent in arguing that, as we heard during the course of the hearings, both from the employers and the trade

R1750 follows



(Miss Martel)

~~the union movement and the clinics, that~~  
there is too much discretion right now, far too much discretion granted to the board to do whatever it wants. We have said in both cases, you either take away that discretion so that there are rules in place that everyone understands and everyone has to live by. If the employer, for his part, believes that the rules are not in his favour, then he can appeal, as the rest of us have to appeal either on our own behalf or on behalf of injured workers.

1750

I would say again that we feel the employer should have an obligation in this respect. That obligation should be clear to him. There should be no question in his mind that the board is serious about levying a penalty if he does not assume his responsibility and that in fact that particular obligation is going to be a costly one; it will not just be a part of the mere price of doing business in Ontario.

The Chairman: Is the committee ready for the vote on Miss Martel's motion? No? Do you want a little more time?

Miss Martel: We will wait until tomorrow.

The Chairman: All right. The first order of business tomorrow afternoon will be the vote on Miss Martel's motion. The committee is adjourned until tomorrow afternoon.

Mr McGuigan: That will give us ample time to decide how we are going to vote.

The Chairman: Yes.

The committee adjourned at 1751.






220N  
C13  
578

STANDING COMMITTEE ON RESOURCES DEVELOPMENT  
WORKERS' COMPENSATION AMENDMENT ACT, 1989  
THURSDAY 6 JULY 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitution:

Sullivan, Barbara (Halton Centre L) for Mr McGuigan

Also taking part:

Rae, Bob (York South NDP)

Clerk: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

## LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 6 July 1989

The committee met at 1617 in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

The Chairman: The committee will come to order.

When we adjourned yesterday afternoon, a time delay had been called on Miss Martel's amendment to Mr Dietsch's amendment.

Mr Wildman: On a point of order, Mr Chairman: I am not sure if it is appropriate to call it a time delay.

The Chairman: All right.

Interjection: Whatever it was.

Interjections.

The Chairman: Okay. There was a request for time under standing order 108(b), which means that the vote on Miss Martel's amendment to Mr Dietsch's amendment will be taken immediately.

Miss Martel: Recorded vote, please.

The committee divided on Miss Martel's amendment ??to Mr. Dietsch's amendment, which was negatived on the following vote:

Ayes

Marland, Martel, Wildman.

Nays

Brown, Dietsch, Lipsett, Tatham, Stoner, Sullivan.

Ayes 3; nays 6.

The Chairman: That deals with Miss Martel's amendment to Mr. Dietsch's amendment.

Interjections.

The Chairman: We now must deal with Mr Dietsch's amendment, which had already been placed. Is there further debate on Mr Dietsch's amendment before the vote?

Mr Dietsch: With the considerable amount of consideration with



Mr. Dietsch

R-1615-2

2

6 July 1989

respect to the motion that I placed some time ago, I would like to withdraw the motion.

The Chairman: Mr Dietsch has withdrawn his amendment on ??subsection 5a(3).

Mr Wildman: The whole thing? The entire amendment?

~~The Chairman: I would not think so.~~

R-1620 follows



1620

~~The Chairman: Mr. Dietsch has withdrawn his amendment on section~~

~~Mr. Wildman: The whole thing, the entire amendment.~~

Mrs. Marland: Does that require unanimous consent?

The Chairman: I would not think so. It is his motion.

Mr. Wildman: Mr. Chairman, does this mean the entire amendment is being withdrawn?

The Chairman: It means that Mr. Dietsch's amendment to section 3 as is in Bill 162 has been withdrawn, and that therefore we would now deal with section 3 of Bill 162 as is printed in the bill.

Mrs. Sullivan moves that the bill be referred from this committee to the House.

Interjection: Reported, that is.

The Chairman: Reported back to the House. That motion would be in order. Mrs. Sullivan, do you wish to speak to your motion?

Mrs. Sullivan: Yes, I will. Mr. Chairman, as you know, the committee has worked strenuously through lengthy public hearings on the bill and then into committee for procedural matters starting on 7 June and for consideration in clause-by-clause of the bill starting 19 June.

Since that time, we have spent about 26 1/2 hours in committee. We have had seven amendments proposed, 18 motions proposed—16 of those motions which were proposed were procedural—we have had 18 20-minute breaks under the standing orders to prepare for votes, and that has amounted to six hours of time, we have now covered two sections of the bill and have started work very slowly on the third section and we have had two amendments accepted to date, one being a government amendment and one being an amendment from the chief opposition party.

~~2~~ ~~\_\_\_\_\_~~ Having reviewed that statistical data and the nature of the debate which has occurred in committee, it is my conclusion, and I believe will be the conclusion of many other members of the committee, that the bill could be better dealt with in the House in committee of the whole House. I believe it is a complicated bill, that we have benefited minimally at this point from the debate in committee and that when the bill is before the committee of the whole House we can benefit from a more extensive debate in the House.

I believe the bill is an important one, and it is one that I think really deserves particular consideration that is not tinged with what I can only describe as the use of the rules to delay the debate that I believe is so

Mrs Sullivan

R-1620-2

4

6 July 1989

important. I made these points earlier in the House on Miss Martel's private member's resolution relating to Bill 162. I feel strongly that there are very important matters requiring substantial discussion and debate and that we will not see progress unless the bill is referred back to the House. Therefore, that is what the motion is designed to do.

Mrs Marland: I wonder if Mrs Sullivan could just confirm for me the figures she gave. I think she said that since 19 June we have been in clause-by-clause discussion for 26 hours. Am I correct?

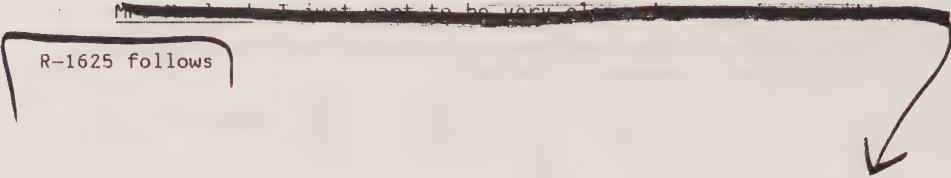
Mrs Sullivan: It is 26 1/2 hours as of last night at 6:00.

Mrs Marland: Since 19 June. So we have spent 26 1/2 hours on clause-by-clause. Is that right?

Mrs Sullivan: That is correct.

~~Mrs Marland: I just want to be very clear and precise about this.~~

R-1625 follows



6 July 1989

(This material is)

~~for 26 hours. Am I correct? Since it was 26 hours of last night at six o'clock. Can you remember 26 hours of last night at six o'clock? Is that right?~~

~~M-5-C6-11-2~~

Mrs Marland: I just want to be very clear because—

Mrs Sullivan: In committee, since we have returned from public hearings.

Mrs. Marland: Right. Now, I listened very carefully to the words of the parliamentary assistant to the minister because I would think, to use her own words, that this is a very complicated bill. You said it requires more extensive debate and you said there are very important matters requiring substantive debate. So, I guess you would have to clarify for me why all of those things cannot take place in committee. I really am at a loss to hear you, on the one hand, say that these matters could be better dealt with in the committee of the whole, and then when you do describe it as a complicated bill requiring more extensive debate and that they are very important matters. After only 26 and a half hours, you think that it is the time to report this bill to the House.

What has happened in this committee that has prohibited the government members from taking part, to use your own words, in more extensive debate? I would like to ask the question through you, Mr Chairman, to the parliamentary assistant and I have something else that I would like to say.

The Chairman: Okay. I am a little uneasy about this. Perhaps it would be better to hear from all members and then allow the parliamentary assistant to respond. Did you wish to continue with your remarks?

Mrs Marland: Okay. All right. Well, then I will.

It seems to me that we, the opposition parties, are being accused of using the rules, I think that was the term used by the parliamentary assistant, to delay the passage of this bill. I do not think it would take more than a grade 1 student out in the real world in this province to understand that with a 94-seat majority in this House, the only way that the opposition parties can use the rules of the House in order that the opposing views to any government bill can be made have to be through using the rules.

Indeed, it is rather ironical because by placing this motion, which is a legal motion, you, in turn, are using the rules. Because you are deciding now that we will use the rules of referring this to the House. If you have accused us of gamesmanship, then this is a blatant demonstration of the same thing. What you are doing is, by your own preamble you have acknowledged what an important bill it is. You acknowledged the number of hours that we listened to the public on this bill, although you did not acknowledge the fact that we only heard from half of the public who wanted to be heard on this bill.

If, indeed, this is such an important bill, and if, indeed, the liberal government is sincere about all the many, many groups that came before us and the many, many heart-rending examples of why workers' compensation is not



Ms Marland

R-1625-2

6

6 July 1989

working in this province today, and if, indeed, the liberal government is concerned at all about any of what was heard by those many groups that came before this committee, I would not think that a responsible government would want to hurry this along and, obviously, that is what is happening here today.

I would think, however, with the input from the public, that a better step for the government would be to go away and draft a new bill with the kinds of significant improvements that would, in fact, make a difference to workers and employers in this province. We have said before, I know I have said before, that Bill 162 is purely a Band-aid approach to what is a very serious problem

R-1630 follows



(Mrs Marland)

~~... make a difference to workers and employers in this province. As I said before, I know I have said before, that Bill 162 is purely a Band Aid approach to what is a very serious problem for both employers and employees in this province. When it is such a serious matter, it is not something that we should be sitting down like children and counting how many times one or the other has been in square one, square two or square three. We are not playing hopscotch. We are dealing with something that affects a very large majority of people who work in Ontario today.~~

1630

We also are dealing with something that affects the economy of our province because if we have a workers' compensation system that is not working for the employees, it certainly also does not work for the employer. The horrific cost of workers' compensation today, without the fair and necessary benefits from that cost means that the system is falling down on behalf of everybody. I think this Liberal government, that campaigns all the time and at every possible opportunity, speaks about their openness, their caring, their commitment to make things better in this province.

Unfortunately and tragically through trying to expedite what should have been the remedy for workers' compensation with Bill 162, they are demonstrating that they really do not care. It is just so much showmanship, "Yes we went on the road and we listened to so many groups. We have done our bit and we have tolerated the game with the rules and committee long enough. We better get it back in the House. We will get it on the way and it will be out of our way and we can get on with something else."

Frankly, I think it is far too big a responsibility that each and every member of this committee shares equally. I do not feel, as a member of the opposition, that the responsibility for workers' compensation in this province is anyone on my shoulders than it is on the six Liberal members who sit on this committee.

I think for those of you who perhaps have always been in the white collar world. And I say this with respect to the people who drafted this bill who perhaps have spent most of their lives in the white collar world. The real world for workers' compensation is the blue collar world. We are fortunate, if we do not have to work in the milieu that those people who do work in that world have to be in. We are fortunate, if other people are willing to take the kinds of risks in their job and their employment places that they take.

You know that joke that everybody says, "It is rotten work but somebody has to do it." It is not a joke for people who work in construction in the other areas and the other fields around this province where they are at risk every day. Sometimes, people who have accidents in employment setting that perhaps are not perceived as being high risk but nevertheless they have accidents.

As long as people have accidents, as a result of their job environment, their employment environment, they are entitled to be compensated and the responsibility rests with all of us that that compensation does not have attached to it some of the tags that Bill 162 puts on it.

Mrs. Harland

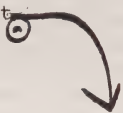
R-1630-2

8

6 July 1989

We have certainly spent a little time discussing some of those tags and how ridiculous the aspect of deeming is, how ridiculous the aspect of—because somebody has a birthday, suddenly their disability diminishes. I think that when we look very closely at what impact Bill 162 will have in its present draft, it is not a bill that any member of this Legislature can be proud of. It is certainly not a bill that any member of the Progressive Conservative caucus will support.

(R-1635-1 follows)



~~(This Parliament)~~

~~when we look very closely at what impact Bill 162 will have on the province, it is not a bill that any member of this Legislature can be proud of. It is certainly not a bill that any member of the Progressive Conservative caucus will support.~~

The Chairman: Mr Wildman is next.

Mr Wildman: I will yield my place to my leader and then speak later.

Mr B. Rae: I had heard that the government was planning to do and simply wanted, on behalf of my colleagues, to indicate why we have been doing what we have been doing and why we feel so strongly about this. I think it is often perhaps through the daily struggle not fully appreciated how strongly we feel about it and why we feel as we do.

Workers' compensation is a contract. It is a contract that is based on the simple idea that 70 years ago the workers of this province gave up certain rights. They gave up the right to sue. They gave up the right to take their employer to court. They gave up the right to use the common law as it then was in order to protect them and their families. Unless you understand that premise of what workers' compensation is, it is a contract based on the workers of this province having given up something in exchange for something else.

The question then becomes, whose property is workers' compensation? Who does it belong to? My answer to that is it belongs to the workers who gave up those rights. Margaret has said very clearly and I think she is quite right. Management does not go down to the Workers' Compensation Board and beg for understanding about why people are losing their mortgages. The companies who pay premiums in order to finance the insurance scheme, those people are not affected by the decision of the Workers' Compensation Board in terms of their personal lives. The people who are affected by that are the working people in this province.

We start from a very basic premise and that is that you cannot make changes to workers' compensation that are not accepted by the people who are the beneficiaries of the law. That is absolutely fundamental to our approach to this thing. That is where we differ totally and fundamentally from the members of the majority and from the parliamentary secretary and from the people who have been carrying the case for the government in this regard, as well as through the minister. We just disagree fundamentally with a change in the law, which is acceptable to employers, but which is not acceptable to the working people of this province.

I am going by memory in my understanding of the history of this legislation, but I cannot recall a single change having been made to this legislation, which was not discussed with and accepted by the organizations that represent working people in Ontario—not one. I cannot remember a time when either an administrative change or a fundamental change was made that was not discussed with and accepted as progress down the road.

The last changes we made in workers' compensation as a result of one of Professor Weiler's reports was when we created the Workers' Compensation Appeal Tribunal, in which we made some other changes, were accepted by the



Mr B. Rae

R-1635-2

10

6 July 1989

Ontario Federation of Labour. They had to be accepted by the OFL because the OFL was naming people who would be on the corporate board.

The reforms that were brought in as a result of the political developments in the late 1960s and early 1970s, when there was a series of newspaper reports about activities at the board and the Union of Injured Workers began to be firm because of the extraordinary gap. It was partly a cultural gap between new immigrant workers and a board, which was not reflected of that part of Ontario. Again, that was accepted by the labour movement. It was a change that was accepted. It was something that was seen as positive by those people who are primarily affected by this law.

~~There is a double standard here. I mean, the Liberal Party would bring in legislation with respect to financial institutions that was acceptable to those institutions in some way. I would like to see legislation that would have been that. I have discussed extensively. For years, it has had a law that said~~

R-1640 follows

(Mr B. Rae)

There is a double standard here. The Liberal Party would not bring in legislation with respect to financial institutions that was not acceptable to those institutions in some way. They would not bring in legislation on nursing homes that was not discussed extensively. For two years you have had a law that said you had to have regulations on the financial reporting of nursing homes, and the minister said, "The reason we haven't brought in those regulations yet is because they have to be discussed with the nursing home industry."

1640

Yet when it comes to workers' compensation, what happens? The minister brings down a law which he must know—if he does not know he is completely out to lunch—is unacceptable to working people because they have stated that categorically from the beginning. This committee has heard from injured workers, from single individuals, from local unions, from the leadership of the labour movement, from workers who are organized and workers who are unorganized and they have all said that they reject deeming, they reject the creation of a welfare scheme instead of an insurance scheme, they reject the failure to make vocational rehabilitation rights real and they reject the reinstatement law as being too weak and they want to see it far stronger.

None of these objections, I may say, has been taken seriously by this government. I was here the day the minister announced his amendments. Those amendments did not address the fundamental concerns of the labour movement and have not changed the opposition of the labour movement. So I am here to deliver, on behalf of our party, a very simple message. That is, if anybody on this committee thinks that by transferring this bill into the House the fight from our party will be any less intense, you are completely deluding yourselves. We are determined to fight this legislation every step of the way as we have been. We make no apology for the fact that it is unprecedented in this province, without any precedent in our history, for a government to impose changes on workers' compensation which have been rejected by the people who are affected by the change. That is the bottom line.

I can tell the government that they are going to be in for a rough time. If they think it is going to be any more pleasant in the House, it will not be because I just think this approach by the government is really intolerable. To impose a change on a social contract without the other party accepting the change is just a flagrant abuse of power, only made possible by the fact that you have a huge majority. We do not intend to let that happen without a fight.

Mr Wildman: I just want to say how disappointed I am that the government party has decided to take this action of moving a motion for the committee to report back a bill that the committee has not dealt with. In reporting back the bill, the committee will have to make some sort of report to the House. I think it would be ludicrous for the chairman of the committee to stand in the House at the direction of the committee members and report to the House that we have made progress on this bill.

Does anyone seriously believe that we have made progress on this bill? Some would say on this committee that that is because of the tactics used by the opposition to try to stop the bill or hold it up. We, as my leader said, make no apology for that attempt. As Mr Rae indicated, this is an attempt by a

Mr Wildman

R-1640-2

12

6 July 1989

government to impose legislation on people who have uniformly and unanimously rejected it. We have a situation where the Minister of Labour (Mr Sorbara) is sort of like that old song about everybody being out of step but Johnny. Everybody who has appeared before this committee has said that this bill will harm workers, will not improve the compensation system but in fact will make it even more difficult for injured workers

R-1645 follows



(Mr Wildman)

~~sort of thing that I thought should be brought forward, but I thought~~  
~~Everybody who has been on this committee has said that this is a~~  
~~workers, and I thought the opportunity was there, but I thought it~~  
~~even more difficult for injured workers~~ to get the kinds of benefits they  
deserve when they have been hurt in the workplace. We have had members of the  
governing party sit and listen, but they have not heard anything that has been  
said to them because there has not been one inch moved by the government in  
responding to the serious concerns raised by the people who made presentations  
before this committee.

There was only one very small move when the minister introduced his  
amendment; one very small where he decided that a worker perhaps could be  
allowed to have more than two assessments in his lifetime if he was hurt, but  
that he would have to show that there was unanticipated and significant  
deterioration in order to have another assessment if he had already had two.  
That is the only serious amendment provided by this government in response to  
the objections that have been raised by the workers.

I see the members of the government party acting as if they are puzzled  
by my comments. If they can identify—and I would like them to so that we  
could report something—anything in those amendments that was represented to  
the committee by the minister that responds specifically to objections raised  
by injured workers' groups or individuals or union locals or collective union  
organizations, if they can relate anything, I would like to hear it other than  
that one.

I guess the government is determined to rush through this bill. It has  
refused to respond to the groups. We had a situation, Mr Chairman, as you well  
know, when we advertised quite properly for input on this legislation, we had  
an overwhelming response because this is a bill that is indeed, as the  
parliamentary assistant said, very important for injured workers. We had over  
600 groups and individuals indicate that they were interested in making  
presentations about this legislation. Most of those groups were injured  
workers and labour groups. Some were employer groups.

This committee decided that they would only hear about half of those  
groups and it indicated to the rest of those groups that they could make  
written presentations, if they wished, but, of course, that did not make it  
possible for those groups to have any interchange with the members of the  
committee. If they made a written submission, there was no opportunity for  
members to ask questions directly of the groups making the presentations, and  
there was no opportunity for those groups to rebut comments made by members of  
the committee, if they believe them to be inaccurate. That was inadequate and  
we said it was inadequate.

Then, Mr Chairman, I regret frankly that you had to participate in what  
I consider to be a ludicrous operation where when we went across this  
province, we had the spectacle of members of the committee putting the names  
of the groups who wanted to appear before the committee into a hat and pulling  
them out of a hat to determine who should make a presentation, as if that had  
any rhyme or reason as to which groups had the right and had the  
responsibility to make presentations.

We had some groups appear before us who frankly perhaps did not have as



Mr. Wildman

R-1645-2

14

6 July 1989

much to say about the legislation as many groups who were denied the opportunity to appear simply because of the luck of the draw. There was no attempt to analyse how groups should be chosen. There was no attempt to say, "We want to hear from these groups because they are representative of the area and of the workers in this particular area, whereas these other groups are perhaps not as representative."

My party and I believe that everyone who got their names in before the deadline, as advertised, should have been given the right to appear before this committee and make their presentations. The fact that we only heard about half of them is an indication that the government

R-1650 follows

(Mr Wildman)

I believe and my party believes that everyone who gathered for the decision, no advertisement should have been given the right to appear before this committee and make their presentations. The fact that we only heard half of them is an indication that the government did not want to hear the overwhelming opposition to this legislation on the part of injured workers' groups and the labour movement.

1650

We heard over and over again objections raised by injured workers' groups and labour unions to various aspects of this legislation, not just one or two but a long list of what is wrong with this legislation and why it is going in the wrong direction, that in fact it is not reforming the Workers' Compensation Act but deforming it.

We had situations when we appeared in various communities across this province where members of our party moved motions to hear groups who were appearing in the committee room and raising objection to the fact they had not been the opportunity to appear even though they had their names in on time, where uniformly members of the party supporting the government voted, like automatons, in opposition to hearing the presentations the groups wanted to make.

Then we had a rather strange situation where, frankly, one of the members of the party supporting the government, my friend the member for Essex-Kent (Mr McGuigan) made the suggestion that perhaps we could indeed open up the hearings when we returned to Toronto. I had objections to that because injured workers had a difficult enough time in coming from other parts of the province to appear at the hearings we had across the province. It would be even more difficult for them to come to Toronto. But he made that suggestion.

What happened when we say, "Okay, that is a good idea"? While we objected to the idea of holding hearings in Toronto during the House sitting, we were prepared to bypass our normal objection to that and to say: "Fine, if that is the way the government wants it, we will hold hearings in Toronto. The groups who did not get the opportunity to appear, if they want to, can come directly to Toronto and appear."

Obviously, that was going to be an economic hardship for many injured workers so we suggested and moved a motion that this committee be prepared to cover the expenses of injured workers who might travel to Toronto to make presentations.

What happened? Suddenly, Mr McGuigan's proposal disappeared and the members of the majority party on this committee voted unanimously against giving workers the opportunity to have further hearings in Toronto.

Interjection.

Mr Wildman: I believe this is quite in order. This committee has to report what has happened in this committee to the House and I am explaining what has happened. If you think you are going to get this through quick, you got another surprise before you.

Mr. Wildman

R-1650-2

16

6 July 1989

Then what happened? Then we went to clause-by-clause, after the government members on this committee rejected the opportunity of injured workers and members of the labour movement to make their presentation in person—

Interjection.

Miss Martel: You have contributed zero to this whole debate and this whole process, Mike. That is how much. You have sat there and said nothing. That has been the extent of the contribution of most of the group that has been in here and that is a real sad state of affairs. You cannot even come in here and defend your government legislation. You have not even said a word in defence of why you are supporting this bill. It is absolutely ridiculous. Marching orders, come in, be silent and say nothing. Is it going to be the same thing upstairs?

The Chairman: Order, please. Mr Wildman still has the floor.


Mr Wildman: I think Mr Dietsch provoked my colleague.

Interjection.

Mr Wildman: The suggestion that I have been ??given marching orders does not bother me in the least.

~~We only heard half of the presentations that we should have heard because the government did not want to hear. We heard objections raised by members of the government party throughout the presentations. They said we had heard this before.~~

R-1655-1 follows



(Mr Wildman)

~~... suggestion that I have been giving marching orders does not do me in~~  
~~at all.~~

So we only heard half of the presentations that we should have heard because the government did not want to hear. We heard objections raised by members of the government party. Throughout the presentations, they said, "We have heard this before. This group is making the same points that other groups have made so why should we bother to hear anymore of this."

They even said on occasion that certain members of the labour movements, staff people from the Canadian Auto Workers or from the Canadian Union of Public Employees or from the steel workers, who traveled around with the committee and assisted locals in making presentations to the committee that had already been before the committee. So there was not really any reason to hear from them again.

It is beyond me why it is that the members of the government party could not get it through their thick skulls that if members of the labour movement from different locals, different unions all across the province were saying the same thing, they might be right. It is no coincidence that they were all saying the same things. It is no coincidence that the members of the Ontario Federation of Labour and the injured workers are all unanimously opposed to this legislation. They are opposed to it because it is bad legislation. How the members of the government party could sit and hear those presentations over and over again and not start to think well maybe—or even doubt a little—that the Minister of Labour (Mr Sorbara) was right and perhaps the labour movement, in their objections, to what the Minister of Labour was proposing, could indeed have been right.

They seem to take this sort of attitude of, "Don't worry, we're in charge; everything will be okay. You guys are just fear mongering or something." Well so we went to clause by clause despite the overwhelming opposition of the labour movement. During the clause by clause, it has been very slow going. I would congratulate my colleague for Sudbury-East (Miss Martel) on the effort that she has made to bring the concerns of the labour movement and the injured workers groups about this legislation before the committee.

I think it unfortunate that I have to say that the members of the party supporting the government, the majority on the committee consistently failed to answer those concerns. Other than Mr McGuigan, and on occasion Mr Dietsch or the parliamentary assistant, the members of the party supporting the government have remained completely silent. They have not participated generally in the debate, they have not responded to concerns that were being raised on behalf of injured workers. They have sort of taken the approach, "Don't confuse us with facts, we'll just proceed."

If any one has been given marching orders, it is the members of the government party. They have been told, despite all of the objections of the labour movement and the injured workers in this province, we are going to pass this legislation. We are going to pass it over their objections, over the overwhelming opposition of the labour movement and the injured workers of Ontario.



It does not matter what they have said. So what do we report? If the majority prevails, and if this is reported to the House, what are we going to report? Obviously, we will report that we have not proceeded very far in dealing with clause by clause. We will have to report that the minister himself had presented to the committee a large number of amendments even before the legislation that he was proposing was deal with. These amendments though did not respond to the injured workers' concern nor to the concerns of the labour movement. I can show why. There is nothing in those amendments that deals with these concerns other than the one I mentioned earlier.

R-1700-1 follows)



(Mr Wildman)

~~... these amendments, though, did not respond to the injured workers' concerns or to the concerns of the labour movement and I can show why there is nothing in these amendments that deals with these concerns other than the one I mentioned earlier.~~ There is nothing that deals with the ceiling on benefits. Despite the demands of the labour movement and the injured worker, there is nothing in the amendments that makes rehabilitation for workers mandatory. Now, we have heard in this committee a number of times over the last few weeks that, yes, there is an attempt to make rehabilitation mandatory, but the only thing in the legislation that is mandatory is for a vocational rehabilitation counsellor to contact the worker. That is it.

1700

The minister and his colleagues have said that they have responded to the recommendations of the Minna-Majesky report on rehabilitation. Yet, during the period that we have been considering this bill, Mr Majesky has indicated that in his opinion 85 per cent of the recommendations of that report have not been dealt with.

The central concern of workers about this legislation that the members of the Liberal Party have not responded to is the dual award system. They have kept saying, "Well, an NDP government brought in a dual award system in Saskatchewan; they have a dual award system or a similar type of system in Quebec." But they have not heard the concerns raised by the workers and the labour movement about the dual award system and they have not responded adequately to the concerns raised by representatives and people from those provinces.

We suggested that this committee might travel to those provinces to find out how that dual award system that the minister is referring to is working. The members of the government party said no. So when that happened, we said, "Well, then, why don't we bring representatives from those provinces to the committee to make presentations and they said no. When the injured workers at their expense brought representatives of injured workers from Saskatchewan and Quebec to appear before the committee, the government party did not respond and did not listen.

We have had presentations about deeming. We went on at great length talking about deeming. Yet it does not seem to have gotten through to the members of the Liberal Party on this committee that, in fact, the board already is using deeming to cut workers off of benefits and to deny them the benefits that they should be entitled to.

The government has not responded to the age discrimination that will be incorporated in this bill in determining the ??non-economical loss award. I did indicate that we will have to report to the House that the minister has, in fact, presented an amendment to the committee which would deal somewhat with the concerns about the limitation on pension reassessment. But, as I said before, it only will apply if there is significant and unanticipated, whatever that means, deterioration in the worker's condition, rather than as presented in the bill, just limiting it to two. Well, that is some movement, but it is a very small movement. That is the only evidence, I think, that we can report that this government has responded in any way to the concerns presented to the committee by injured workers and the labour movement.

(1705 follows)

(Mr Wildman)

~~... that is the only evidence I think that we can report that the government has responded in any way to the concerns presented to it by the injured workers and the labour movement.~~

We still have a situation in the pension awards where the worker will not be allowed to choose his own doctor. The employer will have to agree which doctor should be used in pension reassessment.

My leader has pointed out that we are very concerned about the suggestions made to the committee by the injured workers about the limitations on reinstatement. Too many workers are excluded and the reinstatement provisions in the bill are far too limited. Employers are only obligated for a certain period of time—a two-year-obligation to take back workers, and there is only a guarantee of six months of being kept on by the employer if the worker is reinstated. So we had repeatedly said to us before the committee that all an employer might do is keep the worker on for six months and the next day lay them off, and there was nothing in the bill that would protect the worker. There has not been anything proposed by the government to respond to that concern. ??We will have to report back to the House if this motion passes.

The other major concern that we have and that we share with the labour movement and injured workers is the fact that this bill rather than limiting the discretion by the Workers' Compensation Board, in fact, will expand it. We have the situation where the minister has had to admit that the regulations that will be written for the implementation of this legislation if it passes, are going to be written by the Workers' Compensation Board. Sure they will have to be passed by order in council by the government, but the people who are going to be preparing the regulations will be employees of the Workers' Compensation Board. I would hope, Mr Chairman, that if this motion passess you will report back to the House.

The board will be able to determine what is suitable and available work. The board will determine what the personal and vocational characteristics of a worker. The board will determine what constitutes essential duties of a position, and particularly alarming, the board will determine constitutes successful medical and vocational rehabilitation.

We have talked at length in this committee about the record of the Workers' Compensation Board and what discretion being exercised by the Workers' Compensation Board has meant for injured workers in this province. In the vast majority of cases history has shown that where the board has discretion, it almost inevitably exercises that discretion to the detriment of the worker. The board's approach for many years has made a mockery of the provision in the act which says that the benefit of the doubt should be given to the worker.

The board never gives the benefit of the doubt to the worker. The worker has to prove everything every step of the way if there is a disputed claim. The worker is put in the position of being guilty until he proves himself innocent.

I think it is clear from my comments that I am very disappointed that the government has decided to use this approach.

(1710 follows)

(Mr Wildman)

I do not understand the unseemly haste. I do not understand why when we are only at ??section 3 of the bill the government is suggesting that we should be reporting the bill to the House. There are, after all, 31 sections in this bill. Wait a minute.

1710

Miss Martel: Forty. It does not matter. We are not going to get through them for a while anyway.

Interjection.

Mr Wildman: How many amendments were presented?

Interjection.

Mr Wildman: Sorry. Yes, not 31. Where did I get 31?

Miss Martel: ??There are 31 sections to the bill.

Mr Wildman: Thirty-one sections in the bill. Right. How many amendments?

Interjection: Seventeen.

Mr Wildman: Seventeen. We are at ??section 3 and the government wants to report it. I do not think this committee has done its work.

I do not think this committee, and particularly the majority on the committee, have taken seriously the work that has been given it by the House. They certainly have not taken seriously the objections and the concerns raised by the groups that appeared before this committee. In most cases, on those very few occasions when members of the party supporting the government responded to concerns raised by the groups which were lucky enough to get the opportunity to appear before the committee, it was an in argumentative sense to say, "You do not really know what you are saying. You are not really right. You do not understand. If only you would read the bill and trust us, you would not really have these concerns."

Workers have trusted the government of Ontario and the Workers' Compensation Board for too many years. The walking wounded who appeared us over at Convocation Hall, the University of Toronto, were testimony to what it means and what happens when workers have been in the situation where they have to depend on the discretion of the board and they have to trust the board.

I am opposed to this motion. I think this committee should do its work. The committee should respond to the concerns of the groups that appeared before us in good faith and to those who made written representations to us and that we should go through this bill clause by clause and vote down the clauses that the workers rejected, amend those clauses that might be amended.

Of course, my preference would be that we should report back to this House eventually that this bill was a mistake. This bill would only hurt injured workers in this province and harm the position of workers who have to



Mr Wildman

R-1710-2

22

6 July 1989

deal with the Workers' Compensation Board and report to the House that this committee recommends that the government start over again. This time, instead of writing legislation and introducing it and referring it to a committee and then calling for consultation, this government start by consulting with the Ontario Federation of Labour and the unions in this province and the groups that represent injured workers and the advocates for injured workers in this province about how the workers' compensation legislation should be amended to improve the lot of workers and to ensure they get the kinds of benefits they deserve, the kind of vocational rehabilitation they deserve, that they are ensured of reinstatement rights, and when that consultation is completed, draft legislation that everybody can support rather than force through legislation that almost everyone, except for employers, and even some employers, certainly all members of the labour movement and injured workers' organizations reject.

R-1715 follows



(M. Hill)

~~draft legislation that everybody can support, but the fact is, through~~  
~~the fact that almost everyone except the Progressive Conservative Party~~  
~~employer, can't win all members of the labour movement and injured workers~~  
~~are not happy.~~

Mrs Marland: I think in discussing this motion to report this bill from this committee this afternoon it is important to place on the record some of the things we heard as we went around this province. The reason I say that is that I think I attended every hearing this committee held in the public forum as we went around the province, and it was probably particularly interesting for me as a Progressive Conservative who—let's face it, I am the first to admit, having only been here four years, that traditionally the Progressive Conservative Party has not been known to be the saviour of the injured workers or the employees.

Our party has had many tags and possibly that has not been one of them, but I think one thing our party has always had is a total responsibility to the people who live in Ontario. If that had not been the case, the Progressive Conservative Party would not have been the government for 42 years in Ontario. The reason that we were the government was not that we were elected for 42 years prior to 1985 and it was deemed we would be the government for the next 42 years. The reason was that we earned the renewed mandate, albeit not always a majority, but we earned the renewed mandate from the people of this province to govern this province.

Based on that history of our party and based on the fact that when we were the government we tried to bring in some legislation, I think it was called Bill 101, and when our party did that as the government, what we tried to do was remedy a situation that was not a good situation. Of course, it is quite possible that some of the people who helped draft Bill 101 are some of the people who helped draft this bill. I have not checked into that and I do not know that, but it is possible. You see, the singular difference between the current Liberal government and the previous Progressive Conservative government is that the Progressive Conservative government chose to listen to the criticism of their bill.

Now what we have is a Liberal government that has demonstrated that it does not choose to listen to anybody. I think because our party is viewed as, traditionally, the big business, corporate representative party in some areas, it is important for me to say this afternoon that all the employer groups, the employer advisory council groups, some of the construction companies and I think we had some from some of the automobile manufacturers, all these employer groups that came before in support of this bill, if you were to check the content of their briefs you would see that they all prefaced their support of the bill with an understanding that it was not going to cost them any more.

That is terribly important, because when an employer looks at how they are overburdened today with the cost of workers' compensation—there is nobody in this room who would deny that. The cost of workers' compensation today in this province is a very big burden for anyone who has to pay it, but the reason it is such a big cost is that it is so badly mishandled. It is not because injured workers are overcompensated for the great part. There may be a few exceptions, as there are in

1720  
follows

(Mrs Marland)

~~The cost of workers' compensation today in this province is a very big burden~~  
~~on anyone who has to pay it, but the reason it is such a big cost is that it~~  
~~is so badly mishandled. It is not because injured workers are overcompensated,~~  
~~for the great part, there may be a few exceptions, but there is nothing.~~  
In anything that is administered, there are always going to be exceptions, but  
for the great part, most injured workers are not overcompensated. We have this  
gigantic monolith of administration that is the real cost to workers'  
compensation, not the fact that we have 100,000 injured workers in the  
province who are permanently disabled. The costs are in the fact that the  
system simply is not working.

1720

The fact is that industry, commerce and employers in general came before  
this committee and said, "We do not think it is the total answer, we do not  
believe it is what we really need, but it is better than what we have." I  
think that is a sham of a way for a government to operate, to give people  
something on the basis that they think: "It is not really the remedy, but it  
is better than what we have. We might as well go with it." I think that is  
like trying to throw a football that is half full of air. If you are throwing  
that football that is half full of air and you are expecting somebody to run  
down the field with it, then it represents somebody who is playing at a game  
but really is not in the game.

I think what we are dealing with is a misconception on the part of  
employers that this will not cost them any more. The truth of the matter is,  
there is no way that it will not cost them more, and certainly you can  
guarantee that it will not cost them less.

I feel the one thing that I recognize is not affordable when committees  
go on the road for the Legislature, but I wish it were affordable, would be to  
have Hansard. I think it is only when you go on the road with an all-party  
committee that you actually get the input from the public. Other than  
occasionally a few local media or local press there, nobody really hears—when  
I say nobody, the committee hears what the presenters say, but the whole  
population of Ontario who should be interested in this subject of Bill 162 do  
not even know, unless they are directly involved through their employment,  
that it exists, because they are not affected by it.


It is like what is happening with the health care system. The majority  
of the population in Ontario fortunately is healthy, but my goodness, you  
start looking to get an angiogram or any other procedure, and if you are not  
able to access it when you are unhealthy, then you realize there is something  
wrong.

What I am saying about this bill is that there is something wrong with  
workers' compensation in Ontario today, but this bill, tragically, is not the  
answer. With the motion that is on the floor now to report the bill—to report  
what? It is a farce. It is a total, utter farce. If we are going to report the  
bill as it is, then we could have saved \$100,000 or whatever it cost this  
committee to go around the province asking for public input. We might as well  
not have referred it to the committee. We might as well have just rammed it  
right through last year. All that has been achieved, I suppose, is some time,  
but even in the light with what has been going on with the WCB, with deeming

as it is today without legislation, we probably have not gained anything at all, quite frankly, because the people whom we heard from around this province are not on record anywhere.

I would just say that because the motion is to report this bill, I want to read into the record something that I think must be part of that report. We probably all had different reactions to people we heard from at those public committee hearings, but there were certainly some people who hit home to us more than others. One of the men whom I remember very much hearing from was a man called Steve ??Mantis of Thunder Bay.

R-1725 follows





(Mrs Marland)

~~...for those of you who were travelling with us, you will remember that he was the man who had a complete prosthesis on one arm up to his elbow. He had done a television program the night before he came to hear us at the committee. I was very impressed. I was fortunate enough to catch him on the television in my hotel room the night before, and then when he came before the committee the next morning I, of course, recognized him.~~

One of the men I met... For those of you who were travelling with us, you will remember that he was the man who had a complete prosthesis on one arm up to his elbow. He had done a television program the night before he came to hear us at the committee. I was very impressed. I was fortunate enough to catch him on the television in my hotel room the night before, and then when he came before the committee the next morning I, of course, recognized him.

Here was a man with a major disability, an industrial accident. Like probably most of us, and I realize I can only speak for myself, but I think it must be very difficult, if not impossible, to have a major disability through the loss of a limb without becoming bitter. Yet, Steve ??Mantis had to be the most classy individual in his presentation before us and thorough. I mean he now works for the Thunder Bay and ??District Injured Workers' Support Group. The presentation that he made—I kept all the presentations, but on this one I had written, "Best yet." That was on 11 April 1989. As I listened to Steve ??Mantis, I felt that I really knew more than ever what it was that needed to be done for employers and employees in this province, and it certainly is not in Bill 162.

I just want to quote from Steve's brief because it is not on record anywhere. He says,

??"The tragedy of wasted human potential must be looked at in a larger context. All of society is taxed to care for the men and women and their families. Effective rehabilitation can help change this. There are over 100,000 permanently disabled workers in Ontario. Over 40 per cent of these are unemployed. It is difficult to determine the actual dollars spent to maintain these people. If each of these families received \$15,000 in support from the many government agencies, the amount would be \$600 million each year.

To shift this cost from the workers' compensation accident fund to society at large is unacceptable. The Legislature must send this message to the board. The rehabilitation budget must be expanded and full rehabilitation must be the right of all injured workers. In fact, we would suggest that the primary function of the workers' compensation should be to return the injured worker to the maximum possible degree. This is the way to reduce long-term costs."

I think when Steve ??Mantis told us that, what he is saying is that no matter what side of this issue you are on, if you are responsible for legislating the benefits to the province as a whole, then you have to look at where the costs are of not looking after these people. The truth of the matter is that those costs are going to become a greater and greater burden if we do not rehabilitate people to look after themselves.

Frankly, I think that injured workers do have a right to rehabilitation. I think injured workers have a right to be self-supporting have a right to have the dignity to support their families and their loved ones, the same as people who are not injured do. I find that in Bill 162 where injured workers are not given that right or indeed that opportunity, then we are insulting a

1730  
follows



(Mrs Marland)

~~... injured workers are not given that right or indeed that opportunity  
then we are insulting a segment of our population.~~

I also want to read from the brief presented by the Canadian Paperworkers Union, Locals 49, 238, 306 and 321. This is just a short excerpt. This was presented to us on 12 April 1989 at Fort Frances. This is a short section where this Canadian Paperworkers Union is talking about compensation for the permanently disabled.

?? "Let us give you a recent, real-life example of our concerns. Last year one of our members, a 26-year-old woman, suffered a horrifying accident as she worked alone at night. Her leg was caught in an auger which shredded it as it ripped it away from the rest of her body. Somehow, she managed to crawl off the platform and over 100 feet through the dirt and muck until she collapsed. Fortunately, she was discovered before she bled to death, and she survived.

?? "I know I don't have to fuel your imaginations about the incredible trauma experienced by this woman and the effect it has had on her personal life. Suffice it to say it has been bad, very bad. Thank God this didn't happen to her after Bill 162.

?? "Under the existing act we calculate that this young woman will receive permanent compensation of about \$20 a day for the loss of her leg. Every time she adjusts her artificial leg or tries to hide it or withdraws from some otherwise normal life activity because of it, she will have that \$20 a day, indexed so that it doesn't lose value, as her compensation. Is there anyone here who would exchange their leg for \$20 a day? How about \$100 a day? How much would be fair compensation for your leg?

?? "Because this young woman is made of stronger stuff than most of us, she is making a wonderful recovery and fully intends to return to work earning what she had before her accident. At that point, she will fall into the category of what this government and employers call the overcompensated. Bill 162 would severely cut back the benefits of this victim.

?? "If that same accident happened to her after this bill was passed, she could expect a lump sum that would amount to slightly more than \$2 a day for the rest of an average lifetime. The \$2 would not be indexed, either. We invite the Minister of Labour to come to Atikokan, look this young woman in the eye and tell her that she is overcompensated. He might then stop using that degrading and offensive term."

The Chairman: If I might interrupt you for one moment, Mrs Marland. To all members just a caution that the presentations that were made to the committee are part of the committee's record just as the Hansard debates, the amendments and the bill itself are. References at length from documents that have already been presented to the committee would be out of order.

I think this is a very important debate we are engaged in, because it wraps up the committee's hearings and debate on this very important piece of legislation, so I certainly would not want to restrict references to support your arguments as to why the bill should or should not be reported back to the House but I would just caution you about any kind of at length verbatim

The Chairman

R-1730-2

28

6 July 1989

reading from documents, particularly if they are already part of the record of the committee.

Mrs Marland: I respect that, Mr Chairman and I understand it fully. I recognized it before I went into this, but the point of the matter is that not very many people are going to read 312 briefs. When this bill gets into committee of the whole in the Legislature there will be people speaking for all parties who have not heard what we have heard. That is why the responsibility of the people in this room who vote on this

R-1735 follows





(Mrs Marland)

~~... this bill to the committee. I think that the people who are~~  
~~will be people speaking for all people. We have not heard what we have~~  
~~heard. That is why the responsibility of the people in this room, who vote on~~  
~~the motion today carry a very earnest decision. The decision of the people~~  
who heard what we heard on the road are the people who have a choice of  
turning their back on people like this woman or any number of the other first  
person cases that were before us. Some of them we all—and I say this on  
behalf of all the committee members—some of those cases that were before us,  
were very very difficult for us to hear, to see and to witness.

When we have those kinds of examples, and the responsibility is on us to  
make a decision about whether it is appropriate to report this bill to the  
House, this bill, which does nothing for the people who need a reformed  
workers' compensation system in this province then obviously, those people  
when they make that decision and vote on the parliamentary assistant's motion  
will have to carry with them, on their conscience whether or not they think  
they have done justice to the people who came to them on behalf of thousands  
of people around this province.

We certainly recognized that the various employee groups, the unions,  
the worker advisors, the councils and so forth that came before us were using  
poignant examples to demonstrate poignant needs. The only thing I would say to  
anyone on this committee who will vote on this motion is that we better all  
look forward to the fact that there, but for the grace of God, go anyone of  
us.

Sure right now we have jobs; we are employed. We are employed by the  
people of this province; we are employed by the people in our constituencies  
and we are in that row because we promised those people who voted for us that  
we would serve their best interests. It may be that in your constituency you  
do not have a lot of people who have a lot of needs for workers' compensation.  
To tell you the truth, I probably have a riding that, on a per capita basis,  
compared with many other ridings around this province, has very few WCB cases.

I suppose if I were to compare notes with the member for Sudbury-East  
the number of workers' compensation cases that go through my constituency  
office would be very few in comparison to hers. I want to tell you as the  
elected representative for Mississauga South, I view very seriously my  
responsibility and my loyalty to those people in my riding who need me to  
represent them on this matter. I include equally those employers who tell me  
that they cannot afford the system as it is today. It is on that basis that I  
have taken a position in opposition to this bill.

I cannot imagine for a moment that Mississauga South is very much  
different than many other ridings around this province. If I do not have the  
number of workers' compensation cases that there would be in cities like  
Sudbury, Hamilton and the other the industrial centres in our province, then I  
would suggest that the responsibility is even greater on those  
representatives. I am quite sure that when I think of Mr Campbell who came  
into the high school when we had the hearings in Sudbury and he saw his own  
constituents there pleading, with him, to support the opposition to this  
bill.

(1740-1 follows)



(Mrs Marland)

~~I think of the member for Sudbury (MacGillivray) who was brought into the~~  
~~high school where had the hearing in Sudbury and I am sure that member would, in all consciousness, be very empathetic to his~~  
~~constituents there playing with him to support the opposition committee.~~ I  
am sure that member would, in all consciousness, be very empathetic to his  
constituents.

1740

While we are all, as I started to say a moment ago, in jobs and employed, I guess the greatest risk that we run in our jobs is falling down the main staircase from the Legislature, but somebody out there in our ridings or in our colleagues' ridings are doing the work and doing the job and in the forms of employment where there is always risk. If we are lucky enough to be in jobs that have very little risk, if any, we have on our shoulders the onus and the responsibility to protect those people who need the protection. If those people are injured, and if it were us in another job or friends or family or relatives in other jobs where they do sustain an injury, we would be the first to be running at the head of the parade to say, "That so and so person, whoever they are, has the right to rehabilitation. Look. They cannot work any more at the job they were doing. How can they support their families? How can they meet their mortgage payments and their grocery bills?" They do not have a job. They do not have any skills. They do not have any training to do another job. They do, in my opinion, have a right to rehabilitation.

One last example that I want to give is—and I am afraid that I tore this example out of the brief and I cannot identify the brief from which it came, but I will quote:

??"Before the accident, he was a butcher, earning roughly \$17 per hour. He had been a butcher for 16 years and enjoyed his job. Today, the WCB is telling him that he should take a job in Kirkland Lake as a guard in the psychiatric hospital. In this case, they are telling him, "Don't worry that it only pays \$10 an hour. We will give you a wage loss supplement," but the point is that he does not want to be a guard. He does not want to undertake a job he has no interest in, a job that is often very tense and depressing.

??"He has already been given vocational testing and, in this case, the results said he would be good at counselling. So he wants to go back to school to study what the tests said he would be good at. He wants a job that he feels is both interesting and a service to his community, but the Workers' Compensation Board says no upgrading.

??"The WCB will downgrade a worker's job and then throw money at them. That is what the wage loss system is really about, but what they forget, what they deny is that work has dignity and workers have a right to work with dignity."

I do not think there is anybody on this committee who would deny that, but how can a worker have that dignity or that job opportunity without a right to their rehabilitation? I think it is also important to recall what the member for Windsor-Sandwich (Mr Wrye) said in his remarks to this committee when he was a member in 1983.


??"Political courage is called for, to paraphrase William Wrye in his

~~CONFIDENTIAL~~  
Mrs. Marland

remarks as a member of this committee in 1983. Mr Wrye, as quoted below, was questioning Paul Weiler when he appeared as a witness before the standing committee, and I quote Mr Wrye,

??'Let me be a little argumentative. How can we do that without a definition of "suitable" and "available"? I just do not understand why we are going to leave all the discretionary power in the hands of the board or of jurisprudence, as you have described it. As a legislator, I have a real problem with saying we are going to set up this appeal board and give them all the wide-ranging power to give us a set of jurisprudence on the words "available" and "suitable" when in point of fact those of us who are elected on behalf of injured workers and a whole lot of other people ought to have the political courage to begin to try to define those words

R-1745 follows



(Mrs Marland)

~~the political process and give them all the red string power to~~  
~~give us a set of jurisprudence on the words "available" and "suitable"~~  
~~in point of fact, those of us who are elected on behalf of injured workers~~  
~~and a whole lot of other people ought to have the political courage to begin~~  
~~to try to define those words. If we do not have the political courage, quite~~  
frankly, I do not understand what the hell we are doing here."

That is a quote from William Wrye, and he is a minister of the crown in the current Liberal cabinet. That was a quote from him six years ago. How come a member of the current Liberal government, who made a statement six years ago, with which I agreed, by the way, and which happens to be a tremendous focus and pivotal point that a lot of our arguments have been based on, where legislation has come forward with the words "suitable" and "available," and nobody knows what that means, how come this person would be able to have those questions six years ago and now it does not seem to exist?

Now it seems that, because that individual is in government and, interestingly enough, of course, he is not the Minister of Labour, but he was, is that not an irony in itself? I guess because he is not currently the Minister of Labour, I cannot question him on it, but he was still speaking as a Liberal six years ago. It does not seem to matter today.

The other Liberal I want to quote is the Honourable John Sweeney. I have the greatest respect for John Sweeney. I think that Mr Sweeney is one of the finest members of the Liberal cabinet, if not the finest. The Honourable John Sweeney also had some cogent comments to make on the same date at the same hearing. That was a hearing of this committee in 1983:

"It is all of these connotations of 'available' that concern me. In the general definitions at the beginning of the draft bill, there is no reference as to how you tighten that down. It is too loose. Those of us in the Legislature who work with compensation board people fairly frequently, know that those are the kinds of things that cause so many of the conflicts.

"A board official, even in the sense of good will, says one thing, and the worker says something very different. We spend most of our time trying to resolve those conflicts." That is the end of the quotation of John Sweeney in 1983. Obviously nothing has changed.

The situation in the province in terms of workers' compensation is even more grave and more serious today because of the increasing underfunded liability. Tragically, Bill 162 still does not properly address those concerns of Mr Wrye and Mr Sweeney six years ago, the very same concerns that we heard from thousands of people who were represented at the public hearings around this province.

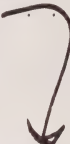
In my opinion it is impossible for this committee to report this bill. If this committee is reporting this bill back to the Legislature for committee of the whole House, which I suppose is the next process, then all we are doing is reporting the government bill. We are reporting the minister's bill with his own amendments added—nobody else's amendments, just his amendments.

What a farce and charade this whole process has been. If we are not going to go through and honestly and above-board entertain amendments to this bill, and who knows, there may even be some amendments that the Liberal

members of the committee might be allowed to support, but unless we went through that process, we would never know. So what we are going to do is report it to the House and we are going to have the people speaking in the House to this bill who have no idea what the true world of opinion is on this bill outside.

Every time someone in the House stands up who did not hear the input of the public hearings on this bill, I will ask them if they read any of the 312 briefs that came before this

1750-1 follows





(Mrs Marland)

~~idea that the true world of opinion is on this bill outside. I will tell~~  
~~you that every time somebody stands up in the House and does not~~  
~~of the public hearings on this bill. I will back them if they do say, "I~~  
~~will brief that same before the committee. Unless they have, they are hardly~~  
entitled to speak in the Legislature on this bill, and I mean that very  
sincerely, because if you are going to comment on a bill and you are only  
going to comment from one side, then that is a bigger charade than anything  
because that is saying, "This is my government's bill. I know it is perfect. I  
know that my own minister has amended it, and with the amendments it is even  
better than it was when it was first introduced."

1750

The truth of the matter is that is a laugh, but it is not funny. That is  
the tragedy. It is not a funny matter. It is a very serious matter. To use the  
words of the parliamentary assistant this afternoon when she moved her motion,  
she said it was a very serious matter. She said it was a complicated bill. It  
needed more extensive debate.

With respect, I would suggest that the more extensive debate should take  
place in this forum with the people who have heard both sides of the issue,  
who have listened to the public input on this bill. If this motion is not  
defeated this afternoon, then we do have a confirmation that the government of  
Ontario is truly a Liberal government with blinkers and earplugs. I do not  
think, in all honesty, that the people of Ontario deserve that kind of  
government.

The Chairman: Any other speakers?

Miss Martel: I suppose the thing that we should start to do really  
is get all the cards on the table and quit with the niceties because what the  
parliamentary assistant has not said is that in fact this is a closure motion  
in this committee, soon to be followed by a closure motion upstairs once it  
gets moved in there. That is what this whole process is all about and let's  
deal with that right now.

I am surprised really—

Mrs Sullivan: On a point of order, Mr Chairman: A closure motion is  
under section 39. I have not put forward a section 39.

Miss Martel: To the parliamentary assistant: It seems to me that it  
has taken a while for the government to get to this point, but in view of the  
events that have gone on around here about Patti Starr, etc, for the last  
number of weeks, I am not surprised this has come at this point in time. I  
will lay money, and I am sure we will all see it will pass in a very short  
time, once this bill goes back into the House, the government will do exactly  
what it did on Sunday shopping and we will have a time allocation motion and  
the government will shut us down and that will be the end.

Thousands and thousands of dollars, of this committee travelling, the  
good people coming out to talk about this bill and give their opinion as to  
why it ??should be scrapped, and it will be all for naught because this  
Liberal government has not listened to a thing about what has gone on and

about what the good people had to say about this bill.

I go back and I say I am surprised that it has taken the government this long, but I guess I am even more surprised concerning a comment that the government House leader made last Thursday. It seems to me I was told this. The government House leader went to one of the Tory members and asked that member if the New Democratic Party was serious about Bill 162. Were they really serious about dragging this out as long as it could be dragged out and postponing it in all possible manners and were they really serious about going to the wall on this?

I could not believe that it took the government House leader that long to wake up and see exactly what was going on. I thought he had more sense than that. He is a pretty bright man. To actually go to the Tories and have to ask if we were serious makes me wonder what planet he is coming from. I know he has been a little frazzled with events that have been going on around here in the last number of weeks, but surely anyone who would have even asked their Liberal colleagues what was going on in this particular committee on this bill would have known that yes, we were bloody serious about it. We always have been and we have no intention of giving this bill to the Minister of Labour Mr Sorbara) on a platter. Far from it. But that it took him that long and that he actually had to ask the question just amazed me.

I suppose the two other things that have come about. First is that the Minister of Labour has a bit of a commitment that he has to live up to in terms of the Workers' Compensation Board. I remember in February when we raising questions on this bill in the Legislature just before the public hearings started, one of our researchers called the Workers' Compensation Board and that researcher called the board and asked for information on Bill 162 and what the position of the board was on this bill. The researcher was told, "We cannot actually give you any information"

R-1755 follows



(Miss Martel)

~~one of our researchers called the Workers' Compensation Board and the~~  
~~researcher called the board and asked for information on Bill 162 and what the~~  
~~position of the board was on this bill. The researcher was told, "We cannot~~  
~~actually give you any information on this bill until it is passed at the end~~  
of June 1989, but if you would like to talk to someone, we can put you on to  
Henry McDonald because he has already been named the director of  
implementation of Bill 162. He will look after your concerns and I suppose he  
can respond to whatever questions you have."

Of course, it did not surprise anyone. The rest of the committee had not  
even started on public hearings yet and here was the Minister of Labour  
telling the board, "Get ready, boys. It is coming in for the end of June. Get  
it in high gear. You already have half of the bill in shape anyway because you  
already have deeming. You already have restrictions on rehab, but get it into  
shape because it is coming down the tubes at the end of June."

I was never so insulted to hear that because I thought to myself, "What  
an absolute farce. What an absolute gross display by this government to try to  
pull the wool over the eyes of the good people of this province by announcing  
we were going to have public hearings, we were going to have input and, on the  
other hand, telling the board, "Get ready. It is coming down in tact at the  
end of June." That is disgusting.

So much for open government, no walls, no barriers and, on the other  
hand, the Minister of Labour telling the people at the board, "It is going to  
be all in place and over with by the end of June." It is a complete waste of  
taxpayers' money. It is a complete disgrace. It was misleading. It was  
terrible to go around the province and tell the good people who had the sense  
to ask, "Are we here for nothing? Are you going to listen?" and then the  
Liberal back-benchers saying, "Oh, we are here with an open mind. We are here  
to listen." On the other hand, the Minister of Labour was going around telling  
people, "The bill is going to be passed the way it is. There may be some minor  
amendments, and it is going to be over and done with by the end of June."

What a waste of time. No wonder people are discouraged about the  
political process. No wonder people are concerned and no wonder people  
criticized the Liberal back-benchers during the course of those public  
hearings over that very issue.

There is one other thing that has realoly prompted this besides the  
government House leader finally waking up and finding out that we were serious  
about this issue. I suppose the other thing that has to be mentioned here is  
in the last number of weeks this government has been more than a little  
embarrassed about Patricia Starr and more than a little embarrassed about the  
latest incidents coming up with regard to Envac.

I have been amazed at how quickly the government House leader could pull  
supposed priority pieces of legislation off the table in order to try to get  
this House out of here as soon as he could. When we came back 25 April and  
there was the first House leaders' meeting, our caucus was told the government  
had a huge list of priority bills that absolutely had to be passed before we  
got out of here. Bill 162 was not the only one. There was a whole host from  
every ministry. We were going to sit here all summer until that was done,  
until this government got Bill 162.



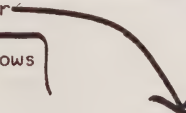
Then what happened? Well, la-di-da, didn't we hear about Patricia Starr and all of her political contributions or alleged political contributions to all kinds of people closely connected to the Liberal government or, indeed, in positions as MPPs or cabinet ministers in the Liberal government. Wasn't it strange that just after that happened, all these pieces of legislation started to slip away from the table and disappear from the table?

All of a sudden it was not so important to deal with all this long list that the government House leader had put out originally, but the only thing that was left, the one thing that had to be passed was Bill 162 because the government did not want to have this bill out all summer with us going on and on every day in committee and the possibility that there would be more opposition that would gather over the course of the summer to counter this bill, to condemn the minister on this bill, to demand again that it should be scrapped. The government could not afford to have that going on. For some weeks now, the government House leader has been wrestling with how he was going to get us out of here, but this get this bill over as well.

We see today what the decision of the government House leader has come to and we see today how the Liberal members on this committee and the parliamentary assistant have been told, "This is the way we are getting out of this. Go into that committee today and move a motion and get it wrapped up in committee so we can get it into the House and we can shut it down in there too." I have no illusions, and I do not think any of you do either, that that is exactly what is going to happen in the next number of weeks once this bill moves out of this committee and gets into the House. I say to you that is an absolute disgrace.

There is no doubt the Minister of Labour wanted this bill. He wanted this bill as quickly as he could have it after it was introduced in June. The day that this Legislature opened on 17 October last fall, he was quoted in the Toronto Star

R-1800 follows





1800

Miss Martel

There is no doubt the Minister of Labour (Mr. Sorbara) wanted this bill. He wanted this bill as quickly as he could have it after it was introduced in June and the day that this Legislature opened on 17 October 1988 he was quoted in the ~~Toronto Star~~ as saying he hoped he had this bill by Christmas, by December 1988.

Mr ??Wildman: No hearings.

Miss Martel: Exactly.

That meant the bill goes into committee, passes completely intact in committee, no amendments being moved, certainly no public hearings, no discussions, no input from the people who are most concerned about Workers' Compensation Board, who I might add were never consulted about this bill in the first place. He did not want any of that. He wanted this bill over and done with and out of the public eye as soon as he could.

That is where he was at last December and it is amazing to me that we have been able to string it out this long but we certainly have. I think we should string it out even more because it is a terrible piece of legislation and all of you who sat on that committee have heard that time and time again. You did not hear that the bill could be fixed. You did not hear the Ontario federation of Labour saying, "If you tinker with this little section on rehabilitation or reinstatement, we will accept the bill." They said over and over again that it should be scrapped and that is what we should have done if the Liberal members on this committee had had any courage to do that in the first place.

I will continue with my remarks on Monday.

The Chairman: Just before we adjourn, committee members will have received a notice indicating when the committee is sitting next week. There is an error in it. The regular sitting days next week are Monday, Wednesday and Thursday afternoon after routine proceedings. Unfortunately, I shall not be with you but you will survive.

The committee adjourned at 1802.

~~\_\_\_\_\_~~

Adm  
C13  
578

STANDING COMMITTEE ON RESOURCES DEVELOPMENT  
WORKERS' COMPENSATION AMENDMENT ACT, 1989  
MONDAY 10 JULY 1989



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)  
VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)  
Brown, Michael A. (Algoma-Manitoulin L)  
Dietsch, Michael M. (St. Catharines-Brock L)  
Lipsett, Ron (Grey L)  
Marland, Margaret (Mississauga South PC)  
Martel, Shelley (Sudbury East NDP)  
McGuigan, James F. (Essex-Kent L)  
Stoner, Norah (Durham West L)  
Tatham, Charlie (Oxford L)  
Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Mackenzie, Bob (Hamilton East NDP) for Mr Laughren  
Reycraft, Douglas R. (Middlesex L) for Mr McGuigan

Also taking part:

Cooke, David S. (Windsor-Riverside NDP)

Clerk: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

Witness:

From the Ministry of Labour:

Sorbara, Hon. Gregory S., Minister of Labour (York Centre L)

## LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 10 July 1989

The committee met at 1640 in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

The Vice-Chairman: I see a quorum. We will convene and proceed. We are currently debating a motion moved by Mrs Sullivan that the bill be reported to the House. Miss Martel has the floor.

Miss Martel: When I ended on Thursday last, I had really just begun to talk about this motion. So, first of all, what I want to is probably reiterate some of what I had said on Thursday.

Mr Brown: We could read it.

Miss Martel: Okay, you could review it, but I will do it right now for your benefit. I was in the process of really stating that when we got down to brass tacks what this motion is, is really a closure motion, in effect, and it would soon be followed by, I would think, a closure motion in this House. I was in the process of outlining why I thought that and why we should dispense with some of the niceties and just get down and say that is exactly what it was.

First of all, I had pointed out that it was fairly well known that some type of commitment had been made to the Workers' Compensation Board regarding when this bill would be over. Most of you will recall that I pointed out that in March, when our research group called the Workers' Compensation Board to try to get information about this bill, we were told that in fact the board could not hand out any information on the bill until it was passed in June 1989. The woman we spoke to further pointed out, however, that if we wanted some information we could certainly have a chat with Henry McDonald since Mr McDonald had already been named director of implementation of Bill 162.

There was a real irony in the fact that while the board was saying this on the one hand and expecting implementation in June 1989, our committee had not even, at that point—or had just begun its process of public hearings. I could not, for the life of me, figure out how that could be done and how it could be so blatant that in fact obviously some information had been given to the board which this committee certainly had not been privy to because I think if the committee had been privy to it we would have never set out on the course of public hearing because indeed that would have just been a real farce.

I also pointed out that my feeling was that the motion was being moved really because this particular government was in trouble on a number of fronts, namely over the question of Patti Starr and her generous donations to the Liberal Party and other people in particular. I pointed out that it was

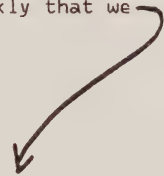


remarkable how the government House Leader in particular had suddenly and mysteriously withdrawn all kinds of legislation that supposedly was priority legislation from the table at a House Leaders' meeting about two weeks ago, when in fact he had been adamant when we returned that a large number of bills were desired by the government and that in fact members of this House would sit until those bills were passed and that he as the government House Leader would ensure that the business of the House would be conducted and ended before we got out of here.

It is really amazing to me to see how many pieces of priority legislation have suddenly gone by the wayside in light of all the scandal and allegation that has gone on here in the past number of weeks. I think that is, by far and large, one of the prime motivating factors behind this particular motion: that is, get us the hell out of here as soon as possible because we cannot avoid going through an embarrassing question period day after day after day.

Finally, the reason I felt that the Liberals had been told to come in here and move this motion on Thursday was that in fact the government House Leader was finally convinced that we in this party were serious about this bill. I related the story that he had gone to see one of the Tory members and asked outright if in fact this Tory knew if New Democrats were serious about this bill. I mention again that I do not know what other planet he has been living on for the last number of weeks. It seems to me that anyone reading even the Hansard out of this committee would have seen quite quickly that we

R-1645 follows



(Miss Martel)

one of the Tory members and asked outright if in fact this very much new Democratic Party was serious about this bill. I mention again that I do not know what other place he was living on for the last number of weeks. It seems to me that anyone reading even the Hansard out of this committee would have gone quite quickly that we have been serious about this, not only in this committee during clause-by-clause, but we have been serious about doing everything we can to delay and divert this bill right from the beginning.

I was surprised that it took the government House leader that long to get it into his skull, but it looks like he finally was enlightened last week because it was not long after—I think it was in fact two days after—he was given this tidbit of information that the Liberal members on this committee—Mrs Sullivan in particular—moved a motion that the bill be reported back to the House.

All of this, culminating in the motion itself, really boils down to the movement by the government on its side to shut this process down as quickly as possible. I do not think that any one of the Liberal members want this committee going all summer, because if we were to sit all summer, even if the House was to recess and we were given the authority to continue, what that would do, of course, is set up a second round of agitation from outside and we would have more petitions and we would have more demonstrations and we would have more people who are more and more angry about this bill and that in fact the government certainly does not want this hanging over its head all summer long, only to have to deal with it again when this House comes back in the fall.

It was quite evident that when the Liberal members of this committee came in on Thursday, they had been told, "Your marching orders are this. We want this bill out of here. We want this bill in the House because sure as shootin' there is a closure motion that is coming on this bill in the House once it goes into committee of the whole."

I think what I want to do in starting today is to return to some of the comments that Mrs Sullivan made when she introduced this particular motion. I have to apologize because I was here for part of her remarks and not part of others, and actually it was difficult—actually impossible—to get a copy of Hansard for today.

In any event, there were some relevant points that she made, which are quite worthy of some discussion in this committee today. One of the first things she said, and I am quoting to the best of my knowledge, was that, ?? "We can benefit from more extensive debate in the House." I had to wonder, as she said it, how she could possibly keep a straight face as she said that because if there was anything more ridiculous, it was to suggest that there had been (a) either a worthy debate going on in here for the last number of weeks during clause-by-clause or that, in fact, it was going to get any better once we moved this bill out of this committee and into the House.

What she did do was point out that this bill had been debated in here for some 26 and a half hours, I think was the correct figure. I phoned the clerk because I was interested in breaking down that figure even further. I would be very interested to break down that figure and find out who spoke during the course of those 26 and a half hours, how long each of those

Miss Martel

R-1645-2

4

10 July 1989

individuals spoke and which side of the debate they were on during the course of that discussion.

I think it has been fairly evident to everyone that this debate in this committee in particular has been very one sided and it has certainly been on our side and that, in fact, we have spent many hours on our side initially moving resolutions, which we thought were important to get the information that this committee required to do a serious job, if indeed (a) it was serious about getting public input into the changes that were required and necessary, and (b) into the clause-by-clause itself, where we raised a number of very pertinent questions, questions that at times Mr Clarke was unable to answer and then had to defer to the Workers' Compensation Board representation who was here to get some clarification. He did a very good job during the course of that time.

I could not believe that Mrs Sullivan could actually keep a straight face and say that because there is no one in here who can say with any legitimacy that when this bill goes out of this committee anything different is going to happen upstairs. You all know that. When it gets up there, it will be this party continuing the debate, moving motions, trying to get questions answered and sure as shootin' the Liberal backbenchers or anyone who was involved in this committee upstairs will be told not to say a thing and to just let it go in hopes that finally we will talk ourselves out and cave in.

~~REDACTED~~

R-1650 follows



(Miss Martel)

1650

I think that has been the whole purpose in this committee. The whole time that we have gone through clause-by-clause. Those have been the marching orders on your side to just sit here, to keep your mouths shut, to not respond to questions, to defer to Mr Clark and allow him to do that, to have only one speaker at any time defend the government's position. Even when she did that, it was in the very basic of terms with the smallest amount of explanation that was absolutely possible.

So for her to suggest that there was any debating here was completely erroneous; it was all on our side. Secondly, to suggest that the reason we have to move it out of here is to get more participation from more members upstairs is also really blatantly outrageous because what will happen up there is exactly what has happened in here. The Liberals will not participate; they will not be around to defend this legislation. In fact it will fall to us, which is fine by me, to try and carry this and hammer again and again at the government about why this legislation is so flawed and why it should be withdrawn.

The second thing that she said which really amused me as well was this—Again I am trying to quote as best as I can remember her particular comments which were also brief. She said that there will not be progress until this bill goes into the House. It seems to me that this bill has gone nowhere, in here, after some—I do not know how many weeks of debate? Some 26 and one half hours, two and one half to three days a week, we have gotten to page two of this particular bill. It was going nowhere and purposely so because from the beginning we have argued that it should be withdrawn and from the beginning we have vowed that we would do everything we possibly could to fight it.

There has been no illusions, on anyone's side as to where we stood in this particular discussion, but to suggest that there is going to be some progress when this bill goes into the House, is ridiculous as well. If you think that we have tied things up in here, you ought to wait and see what we do when it goes upstairs because nothing will be any different up there. We will not agree to a stacking of any votes. We will have divisions on every single motions as we have in here and you can be sure that we will ask for our 20 minutes—or if it 30 minutes upstairs—we will certainly do that as well. We will speak to every motion for as long as we possibly can on every one of them and in the House, it will not be only myself and one other colleague but there will be a large number of us to draw from. They will all be involved. I can assure you that.

So to try and suggest that if we get it out of here it is going to move at a much faster rate and we are going to progress—It is really living in another world. We have no intention of accommodating this government on this bill. We have not accommodated you in here and we will not accommodate you upstairs.



Miss Martel

R-1650-2

6


le 10 juillet 1989

So I wanted to point out that to try and say the reason we are moving piece of legislation out of here is because it is going to go somewhere upstairs really is to try and avoid what we, in this party, have been doing all along and that is to stall this legislation at every possible step in any way that we possibly can. That strategy, that course of action is not going to change if this bill is moved out of this committee and is moved upstairs. I can assure you of that. I put you on notice now. That is exactly where we are going to be when this bill goes into committee of the whole upstairs.

The third bit of information that Mrs Sullivan relayed to us on Thursday was that the bill was an important one and, as a consequence of that, the bill should not be tinged by the use of rules to delay debates. I do not know if she is taking lessons from the government House leader, but it sounds to me a little bit like the pompous statements he made some few weeks ago in the Legislature when he announced the unilateral rule changes for this House.

I know where we are now in terms of the discussions that are going on in the rule changes, but when he stood up in this House and unilaterally decided what changes were going to take place and how the opposition was going to be made accountable and how there would be no more bell ringing and no more endless petitions, I thought to myself, "he has no sense of the tradition of this place. He certainly has forgotten what it was like to be in opposition. Surely the government House leader was in opposition long enough to know what rights we have to have there and what rights

(L-1655-1 follows)



(Miss Martel)

~~There will be no more bell ringing and no more endless petitions~~  
~~I thought to myself he has no sense of the tradition of this place and~~  
~~certainly has forgotten what it was like to be in opposition. Surely the~~  
~~government House leader was in opposition long enough to know what rights~~  
~~have to have the right to be~~ we hold dear as opposition members. For him  
to get up and throw all that aside, as he did in the House some few short  
weeks ago, was really quite amazing.

We said during that discussion, and during the questions that went on that day, that no government in the history of this province had ever, on its own, decided what rule changes should be made for the benefit of all members; that any changes that had come about in this House had come about because there had been unanimous consent by the three parties to change the rules; and, yes, that it involved give and take on all sides. There had been consensus and compromising, but in fact the packages that had been agreed on for changes had always come about by agreement with all three parties. No one government had ever had the arrogance or the audacity to do that on their own.

As I listened to Mrs Sullivan in here on Thursday, saying that this debate should not be tinged by the use of rules to delay debate, I was struck again by how this government views oppositions and the rights they have. It reminded me also of a statement that the member for Kitchener (Mr D. R. Cooke) made when he was in here early on when the committee started by the clause-by-clause; he, too, said that the rules of this committee should be waived and the rules should be changed. He did not like the 20-minute recess that we could call for every vote.

I am really having to wonder if the sentiments of the government House leader are filtering down to all members in the back benches because certainly that is the second time we have heard in this committee how the rules should be changed, in effect to break any kind of rights that the opposition has and to give all the advantage to the majority.

I want to say that we have used the legitimate rules that are available to us. We have not come up with any new ones. We have not used any tactics that have not been used by opposition parties before us, but what we have done is taken full use of those powers that are ??at our hands to delay debate. I cannot believe that any of the back-bench Liberals who are sitting there would not think that their own party in the past has not used the same rule. Second, if they were in our position, working strenuously against a piece of legislation you felt was badly flawed, then you would also use those same rules.

I was amazed when I ??heard—and I do not like to say it—the arrogant remark, which in my mind was to such effect that, in fact, there should be no rules perhaps or that the opposition parties were not entitled to use the rules of this committee to their own advantage. I was quite sorry that Mrs Sullivan actually said that because I think it reflects badly on her for saying that. I think it reflects badly on some of the negotiations that are trying to go on now after the government House leader's outburst of several weeks ago. I had thought that the government House leader was trying to change some of those things and certainly trying to change the sentiments he expressed during that debate and I guess he has not.

Miss Martel

R-1655-2

8

10 July 1989

Just along that point, I think it is also really unfortunate that what she tried to suggest, and I think this is exactly what she did, was that were it not for us using the rules, there would have been progress on this bill, or that in fact through our use of the rules any participation on the part of the Liberal backbenchers was effectively undermined or stymied. I think that is truly an erroneous allegation to make. Every member of this committee has had every opportunity to participate as fully as he or she wanted to. If you chose not to do that, whether you really did not want to participate or you were told not to, that certainly had nothing to do with our use of the rules. There should have been and there could have been much broader participation of every member of this committee during the course of the clause-by-clause. I regret to say that there was not. We certainly did everything from our side that we could to participate. For whatever reason the Liberals did not, it certainly had nothing to do with our use of the rules.

Again, I think it was unfortunate that she should make that statement because one really has to question then what her intentions were in this committee and what kind of lessons she is picking up from the government House leader on this question.

Finally, the last thing I want to talk about is what Mrs Sullivan said, that in fact the bill was an important one. That is probably the truest thing that she said during the whole course of her remarks.

R-1700 follows



(Miss Martel)

1700

~~Now, by the way, I want to tell you that the bill was an important one. That is probably the best that he said during the whole course of his career. But what I cannot believe is that, we would take what is a very important bill, and now remove it from this committee and put it into the House.~~

I remind members of this committee that it has been us who have dealt with this bill for many months now. It was members of this committee who participated in the public hearings, who heard from 315 groups during the course of public hearings and had an interchange with those groups about how this bill should be changed or why it should be dropped completely. There are not many other members in this House who have that advantage or I should point out have had the advantage of going through the legislation as I hope we all have. Certainly, other members in this House—if they have not read the original bill—will not have read the amendments to the amendments to the amendments which were moved in here some five or six weeks ago.

I cannot understand for the life of me why we would take such an important piece of legislation and take it out of here to be dealt with in the House where most members in the House will not have a clue of what is going on, will not have been party to the public hearings, will not know what has been said in favour or against this bill and really will be at a loss in any way shape or form to participate in an adequate manner. It seems to me that this committee was charged with doing something with this bill, whether it was from our side to try and have it scrapped or from your side to try and fix it, but it was certainly this committee that was charged with that business. To put it into the House, at this point, where we all know very few members are going to participate—expect perhaps some of our members.

It seems to me that we are certainly not doing justice to all of those people who came before the hearings with their legitimate concerns and their hopes that either it would be fixed or scrapped completely. To go into the House only strengthens, in my mind, the intention that the government has to bringing closure on this bill as soon as they possibly can.

We are going to move to report the bill—at least that is what Mrs Sullivan has moved—and of course I keep in mind the numbers in this committee and have no illusions as to what the vote will be. I really have to ask and I would think the government members should have to ask themselves, what are we going to report? What are we going to say when our vice-chairman stands up and says that this bill has been moved out of this committee and back into the House?

We have covered all of a page and one half, of this particular bill, in the whole time that we have sat in here. I have to admit when I look at those particular sections, some of the things that were covered were not in any way shape or form very earth shattering. They are certainly not going to change, to my mind at least, the small section that we covered. They are not going to make very dramatic changes to the Workers' Compensation Board or the system. That was just dealing with the small sections that we dealt with in this




committee.

Other than that, we have not done a hell of a lot with this bill. We did not get very far; we did not get to what I would consider the most important and the most dangerous parts of this bill. We have had no discussions on some of the issues that, I think, are key. Some of the issues that the public, who came before us, felt were key during the course of the public hearings. I point out to you again the issues of rehabilitation, the issues of reinstatement, the issues of the dual award system and the issues of increased WCB power that are all incorporated under this bill.

We have not dealt with any of those important issues; what we have dealt with have been very minor changes. I do not think there have been any changes, as a matter of fact, that we have just gone through what the government has put out before us, but certainly we have not dealt with the nuts and bolts of this bill over some of the issues that most of the people who came before us were really concerned about.

I have to ask, what position do we put our chairman in when he stands before the House and report a page and one half of a bill that has gone nowhere fast in this committee? I would like him to have the ability to report that there were some eight motions moved by members on this side, which would have allowed us to gather that information that does not come through the course of the hearings or would have allowed us to clarify things that have been said during the course of the hearings which were not quite correct. All of those motions, or course, voted down by the Liberal members on this committee, day after day after day. ~~was ill, but he did not~~

(R-1705 follows)



(Miss Martel)

~~which would have allowed us to gather that information that did not come  
to the course of the hearings or would have allowed us to gather  
information during the course of the hearings which were not quite  
correct. All of these motions of course were voted down by the  
committee, day after day in~~

But he will not be able to say that and there are a number of other things he will not be able to say, for example, the fact that the majority of groups who came before us bitterly opposed this bill in no uncertain terms and called upon the Minister of Labour (Mr Sorbara) to withdraw the bill and to begin again with a real process of consultation which did not mark the way in which this bill was introduced into this House.

I would like him to be able to say that in fact we had many more people who wanted to come before this committee and wanted to have the chance to interchange with members of this committee in a public hearing process, and that in fact every time the New Democratic Party members on this committee moved to extend the hearings, the Liberal members of the committee voted that down. Whether it was in Thunder Bay, London, Kitchener, Sudbury, Timmins, you name it, in every place we were at it was voted down.

It would nice if the people of Ontario got to hear that as well, but that will not be reported when this bill is reported back to the House.

There are a number of other things that should be reported which I will not get in to because I expect and I fully anticipate there will be a very lengthy debate on this whole motion once it goes out of here. So I intend to save some of my remarks for that particular debate, which I can assure you is going to be lengthy, as well.

I just say that I really cannot understand where we are heading. We have done nothing in this committee with this bill. The participation has been extremely one-sided so that we cannot be accused of blocking in any way, shape or form with rules, that in fact each member of this committee had the full ability to participate within his or her capacity and many members, in fact most members, did not choose to exercise that.

That certainly is not my fault and it certainly is not the fault of my colleagues or the fault of the rules. Whatever your orders were, you followed them out very well. I, for one, although we are going to be accused again of following our own marching orders, can point out that from the beginning we have stated our position very clearly.

This bill is bad. It is fundamentally flawed. It should have been withdrawn. We were supported in that by the overwhelming number of groups who came before us who said the very same thing, from the trade union movement to the injured workers' groups to the legal clinics who again and again and again said there had been no consultation, said the bill was badly flawed, it would do more harm than good and the very bill that is supposed to protect the interests of these people is in fact universally condemned by them.

I have to wonder what is prompting this government to continue with this bill which has been overwhelmingly condemned by those it is supposed to protect and supposed to help in the end.


I think at this point, I know that my colleague the member for Hamilton East (Mr Mackenzie) who has participated extensively during the course of the public hearings also has some comments to make and I think I want to wrap up on our behalf. I would like to hear from some of the Liberals since we only heard Mrs Sullivan's opening statement and nothing else on Thursday. I certainly would like to get some response to what we have raised. I know Mrs Marland also raised some concerns when she was in here on Thursday but I think that my colleague also has some comments he would like to make so I will allow him to do that.

The Vice-Chairman: You will have your wish granted. The only one on the list is Mr Dietsch.

Mr Dietsch: I have listened for some time now to the comments that have gone in this particular committee, and likewise before it, the comments that came forward during the committee hearings on the road and likewise the questions that were asked during question period in the House and comments that were put forward with respect to the readings in the House when the bill came forward.

It is true that members of the opposition have continually maintained their first position as far back as even before we went on the road. We were in the process of public hearings when the member for Windsor-Riverside (Mr D. S. Cooke) made comments that they were committed to killing the bill, that they would do anything and everything that they can. Those comments have not changed. That was even before the public hearing process went on the road, which I guess disturbs me as a new member because I guess being naïve enough to believe that there would be

R-1710-1 follows



13 10 July 1989

(Mr Dietsch)

~~... that they cannot. Those comments have not changed, that was before the public hearing process went on the road. When, I guess, I thought a new member was being naive enough to believe that there would be a good open mind and that people would listen to debates that were going on coming forward from individuals who made presentations to us. But as the presentations continue to come before us, and as the comments from the opposition and the third party continue to come in the negative, it somewhat distracted from what, I thought, was a very good process, a very good, open process in terms of listening to people's concerns.~~

1710

I, for one, along with the other members on this committee, I am sure, and Mr Cooke will just enjoy hearing me, was hopeful of advancement. I suppose after all the number of hours that we spent, I should have known better. I think that in recognizing that there will be extensive debate in the House when this is reported, we have been put on notice going back continually, I was disturbed by the kind of notice that does happen in the government.

The brochure that I have before me now that the leader of the official opposition and Miss Martel were a party to the drafting, in which there were many of my constituents and many on the road who would have, perhaps, felt that fearmongering was a part of the insight to these kinds of brochures. A brochure, I know, that Hansard does not have electronic media to pick up the picture, but it shows the picture of an individual bumping his head against a wall and it says in the cartoon, "George is conditioning himself for the visit to the Workers' Compensation Board."

Now, I can appreciate exactly that kind of tactic being used by individuals who are not necessarily in the right vein to accept constructive approaches to a board in which, in my opinion and the opinion of the government, does and has needed some overhaul for the benefit of the system, so that it can, in fact, be fair to serve those people who are in need. This kind of tactic certainly disturbs me and I do not know, I have been told by others that, perhaps, the taxpayers paid for it. I do not know.

Mr D. S. Cooke: What about the \$100,000 radio ads paid for by the Minister of Labour?

The Vice-Chairman: Order, order.

Mr Dietsch: It is interesting to note that comments are being made about other funds being put forward. It bothers me, though, to think that this kind of tactic would be accepted by the majority of people out there, which I do not think is possible. I think the majority of people understand the improvements that are going to be made to the system, a system that has needed improvements and, if I might, over the echoes of the individual—

The Vice-Chairman: The members of the party supporting the government heard out Miss Martel. Could the members of the opposition please afford them the same courtesy?

Mr Dietsch: Thank you, Mr Vice-Chairman. It is interesting to note, what is the truth? Is the truth perception from one side of the room, or is



Mr. Dietsch

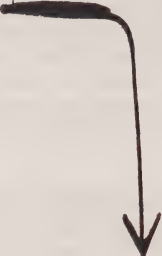
R-1710-2

14

10 July 1989

the truth the facts? I think that, generally, the facts that are out on the table, the people of Ontario will have an opportunity to look at, I am sure. As I was making the point before I was rudely interrupted, the Windsor Star has recognized, coming right out of the heart of southwestern Ontario, some of the minister's strong views at tackling this issue. I think in the editorial it relates that Mr Sorbara is obviously trying to bring under control a service at the present that has all the

R-1715 follows



(Mr Dietsch)

~~...is not taking this issue. I think in the ... to ...  
... is obviously trying to bring under control ... at present that  
... characteristics of a runaway train.~~

Interjection.

Mr D. S. Cooke: ??You should read some of the more recent editorials.

The Vice-Chairman: Order.

Mr Dietsch: There is no question in my mind that the minister has had the courage to tackle what is a very difficult issue. We, on this committee, have had to endure some of the ??beratings from across the aisle and they have not stopped yet, and I do not expect they will. None the less, I have been blessed with a good set of lungs and I have no equivocation of exercising them.

Interjection.

Mr Dietsch: Certainly I think when we look at how this picture has fit itself together and we look at the comments of the Leader of the Opposition when this bill came and the amendments came before this committee, after all the consideration that was put forward of presentations that were made before this committee when it was on the road and to still take the position that "We intend to fight in using every legal parliamentary means at our command," now those are very big words. I compliment the opposition members of this committee wholeheartedly and very sincerely. They have lived up to that commitment to its fullest. I know that they will endeavour to live up to that commitment even after I finish speaking.

Interjection.

Mr Dietsch: When we look at the number of motions and amendments that have been before this committee in its clause-by-clause deliberations and the fact that every one of them required a 20-minute bell. The odd part about it was that there were always two members debating the question and, yet, two to three minutes before the vote was called, one member would get up and leave the room, I expect on command. I do not know. Members of my party have told me that they think it has been on command, but obviously other legislative business has perhaps called them away, none the less, in order that a 20-minute bell would be called.

We can expect that this will go on and on. There was some light made of it when we looked at the aspect of how much we had accomplished. Twenty hours, 27 words. Those comments are not to be taken in jest. Those comments are to be taken from the sincerity of those individuals who feel that there are important legislative changes albeit, and I understand that all members do not agree with those legislative changes, and that is an understandable process. In relation to those changes, there are some in Ontario who do not agree, but there are also, I am sure, some people in Ontario who do agree. The democratic process, I am sure, will avail itself to that course. I think it is fair to say that there have been accusations that members of this committee have not participated in the debate.

M. Nietsch

R-1715-2

16

10 July 1989

I looked all day today in the standing orders to see if it was mandatory that one should participate in the debate. It is not there. It is not necessary. You do not have to participate in the debate if you automatically disagree with the nonsense that is going on, and you do not have to participate in the debate if the things that are being said are not factual, are not in agreement with how you view it and do not make any sense to you. There is no sense in prolonging, as has been the attempt by members of this committee to do just that, to prolong the work of this particular committee. I think it makes a farce of the system in many ways.

I have listened to the sincerity in the comments of members of the third party and I have been told by members of the committee who have brought it to my attention that they are very seldom here participating. That is unfortunate. I have told them we cannot bring that to the attention of the committee because you are not allowed to bring it to members' attention when they are absent and not participating. ~~At least that is my~~

R-1720 follows



(Mr Dietsch)

~~That is unfortunate. I told them we cannot bring that to the attention of the committee because you are not allowed to bring it to a general attention when they are absent and not participating. At least that is my understanding of the rules. I have been fortunate enough to keep that in—~~

1720

The Vice-Chairman: Mr Dietsch, you cannot bring it to their attention when they are not here because they are not here.

Mr Dietsch: That is right. And it is difficult. I am sure they will read about it. Having listened to the admission of the members of the opposition and their ??continuous comments being made in terms of stopping the legislative process, you have to wonder if all the things that go on are not just exactly doing that. We witnessed today petition reading to excess; you know, handing petitions ??to 32 members of a particular area and then bringing another 50 in in the same stack, saying exactly the same thing and reading out a number of those kinds of things. One wonders why one would even consider changing the rules. I guess for some you really have to question why individuals would want to change the rules.

Mr D. S. Cooke: Talk to your government House leader.

Mr Dietsch: If in fact we look at the number of changes that continually happen, the number of amendments that will continually come forward, it has to bring me back to the times when the people from workers' compensation, with whom I have had many arguments and I disagree with some of the actions that they have put forward and certainly—

Mr D. S. Cooke: Probably because they gave out a pension to somebody—

The Vice-Chairman: Order, please.

Mr Dietsch: —in terms of recognizing that there are those in workers' compensation who try to make improvements in the system. I think we witnessed some of those improvements in the system as they started to come forward. We recognize over the last two years that they have gone through some major reorganization, albeit not perhaps enough for the liking of everyone, but certainly in an attempt to answer some of the concerns that have been put forward by many of those individuals we have listened to on the road; the decentralization of services into the regional offices so that in areas specific to the individual members' areas that they represent, there would be an opportunity for better service.

I think it is fair to say that there are a number of dollars being spent on improvements to medical rehabilitation, the adjudication rehabilitation process. I think that those are the kinds of things that I look forward to seeing as improvements in the system for the people I represent and I am sure the members opposite will agree that the improvements that are being made, albeit they are perhaps not being made as quickly as we would all like to see them being made, are a step in the right direction and are a step that we certainly want to make sure continue to happen.



Mr. Dietsch

R-1720-2

18

10 July 1989


This process, in some small way, has added to the improvements in the system. When the Workers' Compensation Board was before us, there was something that I was unaware of and I know that many members of the audience who were present who commented to me afterwards in saying that 83 per cent of the claims are settled in the first five days. It is working to some degree for a large number of people.

I am sure that with the improvements that are being made in the process and the improvements that are being recommended in the legislation, along with those amendments that have come about as a result of the public hearings that have taken place, will no doubt improve the system further.

One would have to ask himself or herself if that improves the system fast enough. I would be first to admit that I would like to have all the improvements yesterday. I think the people I represent and the people everyone represents in this room would like to have an opportunity would like to have an opportunity to watch some of those improvements come forward.

We can look at, and it was brought to our attention and I know that it was brought to the attention of every office, the annual report and the improvements that were coming on with the annual report. We are really talking about

R-1725 follows



(Mr Dietsch)

~~representatives from this room would like to have an opportunity to have these improvements come forward. We can look at it and it was brought to a decision and I know it was brought to the attention of every member of the House and the improvements that were coming on with the annual report.~~

~~Some of the areas of major concern in the legislative process for workers' compensation, and I think important improvements to the legislative process as well, and yes, improvements for injured workers. I have had that unfortunate circumstance in my own person.~~

I have been injured in the workplace. I know some of the trauma that injured workers face. I know individuals in terms of trying to raise a family and trying to make sure that the bills are paid at the right time. I have six children, Mr Chairman, as you probably know. I know we have talked about that before. I have bills to pay along with everybody else. When I was injured in the workplace, I had difficulty with workers' compensation on some of the injuries, and on others of the injuries, they were settled up very quickly. I know that is the case on a number of occasions.

So my friends opposite who like to waive the flag of being the only representatives of labour, I would tell them very respectfully, do not drop the flag, because you are not the only ones. There are many individuals in this Legislature who understand the difficulties that injured workers face, who understand the difficulties and the trauma that an injury places not only on themselves but on their families.

I recall the days when we could not get a rehabilitation assessment and you had to fight like anything to get a rehabilitation assessment. That is some improvement and the members opposite have recognized that as some improvement. We have taken some of those concerns into consideration.

The amendments that have been made by the minister have recognized some of the legislative changes so that individuals, where there is confrontation—and there always is; not everything goes smoothly, just like nothing goes smoothly in this particular building either and just like nothing goes smoothly in this particular committee. There are those who would like to throw their comments, but I tell you, Mr Chairman, and I tell you seriously that individuals are concerned for the benefit of those injured workers. We want to make sure that improvements are made as quickly as possible.

Having said that, I think it is important that we look at the aspect of—I do not want to call it a challenge and I do not want to call it an intimidation move of individuals of this committee—the threat that we will do everything in our power to stop you. I call that an injustice to the injured workers and to a number of those individuals who are in the workforce in the province of Ontario. I know that the debate on some of these amendments will go forward in the House and will go forward in committee. There will be much debate and there will be an opportunity for all the threats to come to reality, if you will.

Let's look and use our time productively. Let's look and use our time to the benefit of the province of Ontario. You know and I know that the types of actions that delay this House cost the province of Ontario and the taxpayers of Ontario—I heard the figure somewhere in the neighbourhood of \$150,000 a

Mr. Dietsch

R-1725-2

20

10 July 1989

day to run this place. If we are going to continually stall and continually try to obstruct people when they have the floor, that is fine, but I think it is important that the government has a commitment to improve the system.

Having said everything that I have said, I move that the question

R-1730 follows



(Mr Dietsch)

~~...try to obstruct people when they have the floor, but I think it is important that the government has a commitment to improve the system~~

1730

~~...and everything that I have said, I move and I speak now be~~  
put.

The Vice-Chairman: Are you ready for the question?

Miss Martel: No, we are not. We would like our 20 minutes, as we are entitled to.

Mr D. S. Cooke: Could I raise a point of order? I do not have my rule book immediately in front of me, but one of the criteria, as I recall, on the ability to move closure is a judgement that must be made by the Speaker, or in this case by the chairman, as to whether there has been an appropriate amount of time for debate.

We are dealing specifically with a motion here to report a bill. We are not dealing with Bill 162, we are dealing with the motion to report Bill 162, which was moved last Thursday. We had Mrs Sullivan, the Conservative representative and yourself, Mr Chairman, when you were sitting here and not in the chair, speak on the bill last Thursday. Today, we have had Miss Martel and the member who just spoke.

I really think it is inappropriate that the closure motion would be moved now, that it is premature, that there has not been adequate debate on the motion to refer the bill and that the motion for closure at this point should be ruled out of order. I think if the member had half an ounce of brains, he would have noted that we were getting to an end in any case, but I think the motion is out of order and should be so ruled by the chair.

The Vice-Chairman: The motion itself is in order. You are quite right, however, that it is the requirement of the chair to determine whether or not there has been adequate debate.

I only have one more individual who has indicated that he wishes to debate the motion and it would seem to me appropriate to hear that member of the committee.

Mr Dietsch: On the member's point of order, I think the member should reconsider his choice of words by insulting the member, myself, with respect to his allegation on brain power.

The Vice-Chairman: I would ask the member for Windsor-Riverside if he would reconsider and withdraw his comments about the member's—

Mr D. S. Cooke: I certainly would reconsider, and if it makes the member happy, I withdraw whatever the offending language is.

Mr Reycraft: On the point of order, I think you indicated when Mr Dietsch began his remarks that there was no one else on the list who wished to



Mr. Reycraft

R-1730-2

22

10 July 1989

speaking at that time.

Mr D. S. Cooke: Then why would he move closure?

The Vice-Chairman: At that time, that was the case, but just momentarily after that, Miss Martel indicated that Mr Mackenzie wished to speak.

Mr D. S. Cooke: She did at the end of the comments.

Mr Reycraft: I thought normally when a member wanted to get on the list to speak, he found a way to indicate to the chair that that was his desire and that would normally be acknowledged.

The Vice-Chairman: Mr Mackenzie did indicate that he wished to speak. He has never had any difficulty in indicating his wish to speak.

Mr Reycraft: I understand then that Mr Dietsch's motion has been ruled out of order?

The Vice-Chairman: No, the motion is not out of order, but the point of order of my friend from Windsor-Riverside is well taken that it is the responsibility of the chair to determine whether or not full debate or adequate debate has taken place. I ruled that Mr Mackenzie should be heard. If you wish to challenge my ruling, that is certainly your option.

Mr Reycraft: Are you indicating then that after Mr Mackenzie makes his remarks, the committee could vote on the motion?

The Vice-Chairman: Yes.

Mr Reycraft: I do not understand how the motion cannot be out of order then and at the same time be voted on, because the question now being put, as I understand it, is neither debatable nor amendable.

The Vice-Chairman: If you look at standing order 39:

~~"Motion for closure, which may be moved without notice, shall be decided by the chair and shall preclude all amendment of the main question."~~

R-1735 follows



~~... I indicated that I am other debatable~~

The Vice-Chairman: "A motion for closure, which may be moved without notice, until it is decided shall preclude all amendment of the main question."

"Unless it appears to the chair that such motion is an abuse of the standing orders...or an infringement of the rights of the minority, the question shall be put forthwith and decided without amendment or debate. If a motion for closure is resolved in the affirmative, the original question..." and so on.

In my view, the minority, represented by Mr Mackenzie, has the right to speak. Again, the motion is not out of order; it is in order, but the chair is ruling that Mr Mackenzie, as a member of the minority, should have the right to speak. If you wish to challenge my ruling, you may do so.

Mr Reyecraft: I accept your ruling, Mr Chairman.

The Vice-Chairman: Mr Mackenzie has the floor.

Miss Martel: Before you conclude, I should point out that when I finished my remarks, I indicated not only that Mr Mackenzie would speak but that I would wrap up on behalf of our party. I am wondering if I will be allowed to do that, because I did not indicate at that time that I wished to conclude on our behalf.

The Vice-Chairman: I am not ruling out that anyone can speak at this point, but I point out to you that a motion similar to Mr Dietsch's can be put at any time; it is in order.

Miss Martel: So you are not going to make a ruling on whether I can speak or not at this point?

The Vice-Chairman: I cannot rule on a motion that at this point has not been put. I ruled that Mr Mackenzie should be allowed to speak. You have indicated that you wish to speak. If someone wishes to move a motion to preclude that, that would be in order at that point. I do not want to prejudge what might be decided by the committee.

Mr Reyecraft: Given that you have ruled that Mr Dietsch's motion is not in order—

The Vice-Chairman: No, no.

Mr Reyecraft: —is in order, I am sorry, will that motion be brought before the committee then, as soon as Mr Mackenzie has finished his remarks?

The Vice-Chairman: Mr Dietsch can call the question at any time or anyone else in the committee can do that.

Miss ??Martel: ??So I can start again?

The Vice-Chairman: Mr Mackenzie.

Mr Mackenzie: I think we need a clarification of that because I may not finish at six o'clock; as I understand it, this committee adjourns for the day at six o'clock.

The Vice-Chairman: That is not a problem. If you are continuing your remarks again, if no one has moved a motion for closure, you can continue your remarks the next day we meet.

Mr Mackenzie: The only point I want to make clear is who is on the list.

The Vice-Chairman: At this point, Mr Mackenzie is on the list and Miss Martel has indicated that she wishes to close.

Mr D. S. Cooke: I would like to be put on the list too.

The Vice-Chairman: All right.

Mr Mackenzie: First off, I want to respond to a few of the comments. I do not intend to spend a lot of time on them, but Mr Dietsch sort of scares me a little bit. His expertise and education as a graduate of ??Brock College are advantages I have not had in my lifetime; so he obviously has a lot of information and knowledge that I do not have. I do however know a few things about the course of hearings that we have had on this particular legislation, and I have some concerns about the motion by one of my colleagues, Mrs Sullivan, to move this back to a committee of the whole in the House.

Mr Dietsch made the comment that he had an open mind and implied that we did not because our conduct and direction was clear from the very, very beginning in terms of Bill 162. He is right that our direction was clear; he is right that our direction was open and known; there is no question about that at all. But I sat in committee for a number of the hearings and listened to Mr Dietsch say very, very clearly to people that he had an open mind; he wanted to hear what they had to say. That is as far as it went, because he heard from almost every group that appeared before that committee and beyond his opening comments about how he had an open mind and was willing to listen to what they had to say, it went no further. Obviously, no one, including an awful lot of workers in his own riding, made any impression on him whatsoever.

I also know that Mr Dietsch claimed to have an open mind on this legislation; he not only told us, he told some of the people appearing before this committee, but he then proceeded to put out a leaflet that people in this room brought before this committee.

J1740 follows

(Mr Mackenzie)

~~made any impression on him whatsoever. I also know that Mr Dietsch claimed~~  
~~to have an open mind on this legislation. ??as he told me and some of the~~  
~~people appearing before this committee but he then proceeded to put out~~  
~~the fact that people in this room brought before him that ??which was~~  
really attacking and telling people in his riding why this bill was wrong and  
what it would do to them.

1740

I do not know how you have an open mind and how you start off with  
witnesses before a committee like this, saying, "I want to hear what you've  
got to say," while at the same time you are putting out correspondence in your  
riding association which simply tells people that ??you support the bill. How  
can you support the bill totally and say this to your people, and at the same  
time tell them, "Hey, I've got an open mind and I want to hear what you've got  
to say." Something just does not ring true somewhere to me; I have real  
difficulties with that.

I would much rather have somebody tell me right off the bat: "I don't  
agree with you. I do support the bill; I think it is a good bill." But why try  
to ??....the troops? I suggest that is exactly what Mr Dietsch tried to do  
many many times during the course of the hearings and what he was in effect  
doing here again today.

Dual award, reinstatement, rehabilitation, increased Workers'  
Compensation Board power are all concerns that have been expressed, and I have  
not heard a defence or an answer to them from Mr Dietsch. Maybe he does not  
feel he has to; maybe he feels that there is nothing wrong with any of those  
things happening with this particular piece of legislation.

But I have difficulty once again, not only in the way it has been  
handled by my colleague but also in the two sets of standards that this  
Liberal Party obviously has: one when in opposition—of course, I cannot blame  
that on Mr Dietsch; he was not around here then—and one when it is a  
government, when the things it says are totally different than what it said  
when it was in opposition.

??I am reminded of a comment that was made today—you know, this  
misleading type of an approach that was made today by the Minister of Labour  
himself. I heard Mr Sorbara in the House say today that Bob Rae—

The Vice-Chairman: Order. I would ask Mr Mackenzie to reconsider his  
choice of words regarding another honourable member.

Mr Mackenzie: What was the—

The Vice-Chairman: Misleading.

Mr Mackenzie: Misleading? I will withdraw the misleading and put it  
this way: the minister made comments in the House today to the effect that Bob  
Rae and the New Democrats oppose this reform; that was in response to the  
question that he got from my colleague Shelley Martel. We oppose it only  
because we support the current Workers' Compensation Board system.



Mr. Mackenzie

R-1740-2

26

11 July 1989

I think the minister knows that was not an accurate statement. I am not sure, maybe it is the minister who should be withdrawing his comments, because that certainly would indicate that we were somehow or other misleading, and that is certainly not the case. We have always had reservations about the current bill and have raised them very very strongly. But what has very clearly not happened in Ontario before in terms of workers' compensation is that a bill was brought in that was negative in terms of its effects on workers, or which the workers themselves perceived as having negative effects.

This bill does not improve things for injured workers. I heard the Minister of Labour make comments in the House today that ??on a one-on-one situation with workers he is able to explain some of the errors of their thinking on this particular legislation. We had a fair delegation; there are still many in this room. I know we cannot involve them in a discussion, ??but they are workers who have been very much involved all their lives in workers' compensation matters and work for the clinics or the injured workers or a number of the groups that are involved.

I went over just before we left the House today to find out if a single one of them had been convinced or knew anybody at all who had been convinced in a one-on-one situation. They did not. Maybe one of the things and one of the motions we should have moved and did not move in this committee was a motion that would have the minister produce for us some of those people he had been able to convince that this bill was a good one, because I have not found out yet.

I have not found out from any of the unions; I have not found out from any of the injured workers—and I know the injured workers' membership and organization is growing at the fastest rate in their history right now, and that is probably because of this particular bill. So, I do not know why the minister could not produce people who think this is an excellent bill and that he has been able to convince that there is really something in it that would help workers rather than hurt them.

The Vice-Chairman: Order.

1745 follows



(Mr Mackenzie)

~~... membership and organization is growing at the fastest rate in a long time, and that is probably because of this particular bill. I do not know why the minister could not produce people who think this is a good bill, who he has been able to convince that the current system is better than it is, that would help workers rather than hurt them.~~

Hon Mr Sorbara: If I just might interject for a moment, because my own credibility is being called into question. Had I not been interrupted today in the House with interjections, what the members would have heard me say is that the real debate in this bill is over a system to compensate people with permanent partial disabilities. Those who oppose the bill prefer the current system to the dual award system being proposed in Bill 162.

If I am wrong in that, I would love to hear it from the member for Hamilton East (Mr Mackenzie) in his comments, because that has always been my impression. I did not suggest that they loved the current system and I did not suggest that they did not believe that the current system needed changing, but they preferred the current system to the dual award system being proposed in Bill 162. That is a valid point of view.

The Vice-Chairman: That is indeed what it is, a point of view rather than a point of order, but a point of clarification, yes.

Hon Mr Sorbara: Thank you for letting me make my point.

Mr Mackenzie: I think it also begs further clarification. There is no question in my mind that that can leave a very wrong impression as well. Most of our people are not happy with the current system, but I can tell you they are even more happy with the new system under Bill 162. That does not mean—

Hon Mr Sorbara: Less happy.

Mr Mackenzie: You might use the words "less happy," but that does not mean you have any use for it or particularly like it. What you have brought in in this particular piece of legislation is a system that is a hell of a lot worse than what these workers have had to put up with in dealing with injured workers and the assessments before.

Why in heaven's name are we bringing forth legislation in Ontario that takes us backwards in terms of workers' compensation? It does not make any sense. We have not moved backwards before, to the best of my knowledge, in this province when it comes to workers' compensation. Now we have a minister who, for reasons I cannot understand, wants to be the first Minister of Labour in the history of the province who is going to do harm, not good, as far as injured workers are concerned and as far as rehabilitation or the dual award system or anything else is concerned.

That is the perception that has not been changed or turned around in terms of workers in Ontario. I have to say that very clearly, and it is probably the biggest single problem with the attempt to sell this bill that has gone on. The minister can argue all he likes, but if he cannot tell members of this committee and members of the House, and as far as I know members of his own caucus, although he has obviously got most of them

hoodwinked, who he has convinced that this bill is going to help them, I do not know.

Hon Mr Sorbara: Do not say that.

Mr Mackenzie: I do not know what the minister is shrugging his shoulders and smiling at. I have seen members here, one of them, Mr Dietsch, who opened up his opening questions to many of the groups before our committee with how concerned he was and how sympathetic to their views he was. Then it turned out that he had no sympathy at all when they told him: "Hey, we don't like this. It is going to hurt us."

Mr Dietsch: Do not tell me that. That is not true and you know it.

Mr Mackenzie: That is exactly what happened in the hearings across the province.

Mr Dietsch: That is your presumption, like all the rest of them that are wrong.

Mr Mackenzie: That is exactly what happened in the hearings around this province.

Mr Dietsch: You are full of it.

The Vice-Chairman: Members are reminded that they should address all their comments to the chair.

Mr Dietsch: You sit there on your righteous pedestal.

The Vice-Chairman: Are you referring to the chair?

Mr Dietsch: Yes.

Mr Mackenzie: Why would a member be open-minded, open to change or discussion on this issue, want to hear the arguments being made and at the very same time as that member is doing that be sending out correspondence in his riding saying how he supports this bill? I find that to be a double standard. The member may not like it, but it is exactly what we had happening. It is much the same as the comments I just made about the minister's comments. He said we opposed it only because we like the current system. That is a far stretch. Because we think the new bill you are bringing in is worse than the one we have now, it does not mean we have any particular use for what we have now. I guess if you want to put it on the basis of lesser evils maybe that applies. That is about the only argument you could make for it.

Hon Mr Sorbara: That was my point today.

Mr Mackenzie: You did not make it very clear, and there has been an awful lot of fudging of the issues on this deal.

Hon Mr Sorbara: Well of course not. There were all sorts of interjections, shouting and screaming and hollering.

Miss Martel: Come on. You never make anything clear.

1750 Follows





1750

The Vice-Chairman: Order.

Mr Mackenzie: The other thing is, if it was our minds that were closed and not the government members—there are 94 of them and there are six or seven of them who sat on committee and probably another 10 or 12 who have filled in from time to time on the committee—I have difficulty in understanding how—I think even they will admit that—the overwhelming weight of evidence that came from injured workers, every single injured workers group that appeared before this committee, every single trade union—I do not know of one that differed, the minister may have an advantage on me here but I do not know of it—every single legal aid clinic and certainly some of the other concerns groups and churches all opposed this legislation and said it was going to hurt workers.

Did they not get through to them at all? I am not sure. It seems to me the open minds were on one end or one side of this issue alone.

We were a little surprised that Mr Dietsch moved his motion earlier because it was not our intention to have this thing go past this evening. We would like to see it in the House. It is going to be very interesting to see what kind of closure the government is prepared to move in the House.

What we have here now in Barbara Sullivan's motion is a closure motion in this particular committee. We knew that sooner or later you would put it through, but the idea that we will get more extensive debate is an absolute joke. I hope at least the government members will recognize that in moving this first closure here in this debate now and moving it into the House, they are going to have to do exactly the same thing. I think they have already decided on that. The argument that was used to move this motion the other day, that it would mean more extensive debate is another specious and phoney argument like so many that we have been getting from this particular government.

We could go on this forever if we wanted to but I am prepared to let this come to a vote tonight. I just love the idea of getting into the House and having a chance to go at it and showing up to all of the people here who are interested and all of the groups across Ontario just how this government, with such an overwhelming majority of 94 members against 19 New Democrats is willing to stop on the democratic procedures and move closure and move this bill through in a hurry, in spite of the almost total opposition of the concerned care groups that are going to feel the effects of this.

I want the government to know it is going to here about this right through until the next election. Workers are going to be hurt every month from the passing of this bill on and I hope they make it loud and clear to the



government members just exactly what you have done to them, and I think they will. I do not think they are going to forget this in Ontario.

The Vice-Chairman: I do not want to close off debate but I am wondering if perhaps the members might be ready for the question.

Mr. Reycraft: Given what Mr Mackenzie has said about his interest in having the bill reported back to the House, I wonder if it might be that Mr Dietsch's motion is unnecessary and perhaps we can take the vote on Mrs Sullivan's motion of this afternoon.

Miss Martel indicated that she wanted some time to get members in and I realize there is only about eight minutes or so left before the normal adjournment time at six o'clock, but I wonder if that might be enough time to get ready to take the vote on Mrs Sullivan's motion.


The Vice-Chairman: Are you ready for the question?

Miss Martel: If I may, I would be prepared to take this vote at six.

The Vice-Chairman: Is that acceptable to the committee?

All right. We will be voting then at six o'clock on Mrs Sullivan's motion that the bill be reported to the House.

R-1800-1 follows



1801

The Vice-Chairman: The committee will come to order please.

The committee is to vote on Mrs Sullivan's motion on Bill 162, that the bill be reported to the House.

Mr Mackenzie: Recorded on the record please.

The Vice-Chairman: Okay.

The committee divided on Mrs Sullivan's motion which was agreed to on the following vote:

Ayes

Brown, Dietsch, Lipsett, Reycraft, Stoner, Tatham.

Nays

Mackenzie, Martel.

Ayes 6; nays 2.

Bill, as amended, ordered to be reported.

The Vice-Chairman: Just before you all go, the committee will be adjourned until the call of the chair. I am going to suggest, if it is acceptable to the committee, to the chairman that he might call a meeting of the steering committee early next week to talk about what, if anything, the committee should be doing now that we have dealt with this matter. Is that acceptable. Thank you.

The committee adjourned at 1802.











NOV 9 1990





3 1761 11467 196 9